



## OFFICE OF MANAGEMENT AND BUDGET

### 5 CFR Part 1321

[Docket No. OMB-2023-0015]

RIN 0348-AB81

#### Fundamental Responsibilities of Recognized Statistical Agencies and Units

**AGENCY:** Office of Management and Budget (OMB), Executive Office of the President.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Public trust in Federal statistics is essential to their value and use in informing decisions across public and private sectors. To promote public trust in the statistical agencies and units that produce Federal statistics, the Office of Management and Budget proposes to issue regulations pursuant to Title III of the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act) that provide direction to statistical agencies and units. These proposed regulations also would provide direction to other Federal agencies to enable, support, and facilitate statistical agencies and units in carrying out four fundamental responsibilities: produce and disseminate relevant and timely statistical information, conduct credible and accurate statistical activities, conduct objective statistical activities, and ensure the confidentiality and exclusive statistical use of data collected for statistical purposes.

**DATES:** Send comments on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may send comments, identified by Docket No. OMB-2023-0015 and/or RIN number 0348-AB81, by any of the following methods:

\* Federal eRulemaking Portal: [www.regulations.gov](https://www.regulations.gov). Follow the instructions for sending comments.

\* E-mail: [TrustRegulation@omb.eop.gov](mailto:TrustRegulation@omb.eop.gov). Include Docket No. OMB-2023-0015 and/or RIN number 0348-AB81 in the subject line of the message.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *www.regulations.gov*. In addition, comments submitted in response to this notice may be subject to disclosure under the Freedom of Information Act. For these reasons, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket; however, *www.regulations.gov* does include the option of commenting anonymously. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

*Docket:* For access to the docket to read background documents or comments received, go to *www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Kerrie Leslie, 202-395-5898,

*TrustRegulation@omb.eop.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **A. Executive Summary**

The Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act) became law on January 14, 2019.<sup>1</sup> The Evidence Act seeks to “advance evidence-building functions in the Federal government by improving access to data and expanding evaluation capacity.”<sup>2</sup> Part of advancing evidence-building functions is enhancing the foundation for generating high quality evidence, including improving the ability of Recognized Statistical Agencies and Units to produce relevant, credible, and objective statistical information. As such, Title III of the Evidence Act (also known as the Confidential Information Protection and Statistical Efficiency

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<sup>1</sup> Foundations for Evidence-Based Policymaking Act of 2018, Pub. L. 115-435, 132 Stat. 5529 (2019), available at <https://www.congress.gov/115/plaws/publ435/PLAW-115publ435.pdf>.

<sup>2</sup> Foundations for Evidence-Based Policymaking Act of 2017, H. Rep. No. 115-411 (2017), available at <https://www.congress.gov/congressional-report/115th-congress/house-report/411>.

Act of 2018, CIPSEA 2018) updated and enhanced CIPSEA 2002<sup>3</sup> by, among other things, codifying the four fundamental responsibilities of Recognized Statistical Agencies and Units and requiring other Federal agencies to enable, support, and facilitate the Recognized Statistical Agencies and Units in upholding these responsibilities. These proposed regulations seek to provide direction to agencies in carrying out these responsibilities. The four fundamental responsibilities are:

- (A) produce and disseminate relevant and timely statistical information;
- (B) conduct credible and accurate statistical activities;
- (C) conduct objective statistical activities; and
- (D) protect the trust of information providers by ensuring the confidentiality and exclusive statistical use of their responses.

In codifying these responsibilities, the Congress recognized the value of maintaining and improving the relevance, accuracy, and objectivity of Federal statistical data as well as securing the protection of confidential information used in evidence-building. In codifying the fourth fundamental responsibility, the Evidence Act also reaffirmed the central tenet of CIPSEA 2002—that Recognized Statistical Agencies and Units must have the authority and capability to protect confidential statistical data and to assure information providers that any information provided to the Recognized Statistical Agency or Unit for statistical purposes under an obligation to maintain confidentiality will be kept strictly confidential and used exclusively for statistical purposes.

While the principles addressed in this proposed regulation are not new, and in fact have long been a consistent subject of OMB, Federal Government, and international policy for almost as long as governments have been charged with collecting and disseminating information about

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<sup>3</sup> E-Government Act of 2002, Public Law 107–347, title V; 116 Stat. 2962 (2002), *available at* <https://www.congress.gov/107/plaws/publ347/PLAW-107publ347.pdf>

their societies, their actual implementation in the form of standards and practices can involve a wide range of managerial and technical challenges, especially as the Federal Statistical System evolves in the face of the unique modern data environment. These proposed regulations seek to provide some clarity in upholding these requirements on Recognized Statistical Agencies and Units and other Federal agencies. While these proposed regulations seek to learn from the long history of policies developed to support Federal statistics, they also seek to promote moving Federal statistics forward. It is important that Recognized Statistical Agencies and Units continue to move their methods, engagements, and collaborations forward productively, recognizing lessons learned across their vast history while embracing new ways of working.

## **B. Statutory Authority**

As required by 44 U.S.C. 3563(c) and the general authority in 44 U.S.C. 3562(a) to promulgate rules to ensure consistent interpretation by agencies of the requirements of CIPSEA 2018, OMB is proposing these regulations to provide direction to agencies in carrying out the responsibilities described in section 3563. Section 3563 describes the fundamental responsibilities that Recognized Statistical Agencies and Units must adhere to, and charges all Federal agencies with enabling, supporting, and facilitating Recognized Statistical Agencies and Units in meeting these responsibilities.

## **C. Brief History of the U.S. Federal Statistical System and Related Authorities**

Federal statistics have informed decision-making in the United States since its founding. The first constitutionally mandated census of population and housing was in 1790.<sup>4</sup> This 1790 Census planted the seeds for what is referred to today as the Federal Statistical System. Over the 19th century, the system continued to blossom into a specialized, decentralized, interconnected network to address emerging information demands, including tax, agriculture, education, and labor, for the growing Nation. The 20th century presented new and evolving policy needs leading

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<sup>4</sup>Carroll Wright, Comm'r of Labor, *The History and Growth of the United States Census*, S. Doc. No. 194 (1900), available at <https://www.census.gov/history/pdf/wright-hunt.pdf>.

to further expansion of the Federal Statistical System to include commerce, public health, energy, justice, transportation, and more. More than two decades into the 21st century, the Federal Statistical System continues to provide the gold-standard for impartial, trusted Federal statistics foundational to informing decisions across the public and private sectors.

*The Federal Statistical System.* The Federal Statistical System collects and transforms data into useful, objective information and makes it readily and equitably available to stakeholders while protecting the responses of individual data providers. Federal, State, local, territorial, and Tribal governments; businesses; and the public all rely on this information to be credible and reliable and, so they can use it to make informed decisions. The decentralized, interconnected network includes:

*Office of the Chief Statistician of the United States.* Led by the Chief Statistician of the United States, the Office of the Chief Statistician of the United States at OMB has the statutory responsibility<sup>5</sup> of coordinating the Federal Statistical System to ensure its efficiency and effectiveness, as well as the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes. This office accomplishes this by promulgating regulations, developing and maintaining statistical policies and standards, identifying priorities for improving programs, assessing statistical agency budgets, reviewing and approving collections of information from Recognized Statistical Agencies and Units, and coordinating U.S. participation in international statistical activities, among other functions.

*Sixteen Recognized Statistical Agencies and Units.* Thirteen of the sixteen are considered to be principal statistical agencies and units (see Table 1), which are agencies or organizational units of the Executive Branch whose missions are predominantly the collection, compilation,

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<sup>5</sup> 44 U.S.C. 3504(e).

processing, or analysis of information for statistical purposes,<sup>6</sup> covering such topics as the economy, workforce, energy, agriculture, foreign trade, education, housing, crime, transportation, and health. In addition to those thirteen, three additional statistical units across the Federal Government are “recognized” by OMB under CIPSEA 2018.<sup>7</sup> These three Recognized Statistical Agencies and Units are: the Microeconomic Surveys Unit at the Board of Directors of the Federal Reserve System; the Center for Behavioral Health Statistics and Quality within the Substance Abuse and Mental Health Services Administration at the Department of Health and Human Services; and the National Animal Health Monitoring System within the Animal and Plant Health Inspection Service at the Department of Agriculture.

*Approximately 100 other statistical programs.*<sup>8</sup> These statistical programs produce and disseminate statistics in support of other mission areas and conduct a variety of evidence-building functions, including program evaluation, scientific research, data collection, policy and program analysis, and the provision of funding and other support for external research.

*Twenty-Four Statistical Officials.* Pursuant to the Evidence Act, each Chief Financial Officers Act (CFO Act) agency<sup>9</sup> has designated a senior staff person in the agency to be the Statistical Official with the authority and responsibility to advise across the agency on statistical policy, techniques, and procedures, and to champion statistical data quality and confidentiality. At the 11 CFO Act agencies that contain a principal statistical agency or unit, the head of that principal statistical agency or unit has been designated the Statistical Official, as required by OMB M-19-23.<sup>10</sup>

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<sup>6</sup> 44 U.S.C. 3561(12) (“The term ‘Statistical purpose’ (A) means the description, estimation, or analysis of the characteristics of groups, without identifying the individuals or organizations that comprise such groups; and (B) includes the development, implementation, or maintenance of methods, technical or administrative procedures, or information resources that support the purposes described in subparagraph (A)”).

<sup>7</sup> More information on the history of OMB “recognition” is available later.

<sup>8</sup> Office of Mgmt. & Budget, Exec Office of the President, Statistical Programs of the United States Government: Fiscal Years 2019/2020 (2020), available at <https://www.whitehouse.gov/wp-content/uploads/2020/12/statistical-programs-20192020.pdf>

<sup>9</sup> 31 U.S.C. 901.

<sup>10</sup> Office of Mgmt. & Budget, Exec Office of the President, M-19-23, Phase 1 Implementing of the Foundations for Evidence-Based Policymaking Act of 2018: Learning Agendas, Personnel, and Planning Guidance (July 10, 2019), available at <https://www.whitehouse.gov/wp->

*Interagency Council on Statistical Policy (ICSP)*. Chaired by the Chief Statistician of the United States, the ICSP<sup>11</sup> was established to advise and assist OMB, through the Chief Statistician of the United States, in carrying out its statutory responsibility to coordinate the Federal Statistical System to ensure its efficiency and effectiveness, as well as the objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes; to implement statistical policies, principles, standards, and guidelines; and assess statistical program performance.<sup>12</sup> The ICSP supports implementation of the statistical system's vision to operate as a seamless system, working together to provide strategic vision and robust implementation in support of the U.S. Federal Statistical System's critical longstanding — and expanding — role for supporting evidence-based decision-making. For example, the ICSP sets strategic goals on issues such as modernizing the statistical system, ensuring data quality and confidentiality, and providing safe and appropriate data access, playing an effective role in agency-wide data governance, as well as enhancing coordination and collaboration across the system. ICSP currently includes 26 members in addition to the Chair. Pursuant to the Paperwork Reduction Act of 1995 (PRA), all 13 heads of the principal statistical agencies and units are members.<sup>13</sup> Pursuant to the Evidence Act, all 24 Statistical Officials are also members; however, 11 of the Statistical Officials are also heads of principal statistical agencies or units. The ICSP is a forum for collaboration, coordination, and information-sharing among the principal statistical agencies and units and additional statistical programs across its member agencies, including on issues such as ensuring data quality and confidentiality, attaining and providing data access, and playing an effective role in agency-wide data governance.

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content/uploads/2019/07/M-19-23.pdf. In the case of the Departments of Agriculture and Commerce, which each host two principal statistical agencies or units, the Statistical Official role is rotated among the two principal statistical agencies or units.

<sup>11</sup> 44 U.S.C. 3504(e).

<sup>12</sup> *Id.*

<sup>13</sup> The ICSP was recently expanded to include the three Recognized Statistical Units, which will bring the ICSP membership up to 29 by fiscal year 2024.

*Brief History of Recognized Statistical Agencies and Units.* OMB first *recognized* statistical agencies and units in a June 1997 OMB Order, “Order Providing for the Confidentiality of Statistical Information,” (1997 Order).<sup>14</sup> The 1997 Order sought to clarify, and make consistent, government policy protecting the privacy and confidentiality interests of individuals or organizations who furnish data for Federal statistical programs, and in it, OMB *recognized* 12 statistical agencies and units subject to the order.<sup>15</sup> About five years later, the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA 2002) was enacted and gave OMB the authority to determine whether an agency or unit could be considered a statistical agency or unit for purposes of CIPSEA 2002, including for using the strong confidentiality protections it afforded. Those considered by OMB to be a statistical agency or unit for purposes of CIPSEA 2002 were known as *recognized* statistical agencies and units. CIPSEA 2002 implementation guidance *recognized* the 12 statistical agencies and units from the 1997 Order plus two additional statistical agencies or units.<sup>16</sup> Since then, two more statistical agencies or units have been *recognized* by OMB.<sup>17</sup> CIPSEA 2018 reauthorized the OMB authority to make this determination under section 3562.<sup>18</sup> At current, there are 16 Recognized Statistical Agencies and Units. Table 1 provides a list of the current 16 Recognized Statistical Agencies and Units and their highest-level organization, as well as an identifier if the Recognized Statistical Agency or Unit is also a principal statistical agency or unit.

*Table 1. Current Recognized Statistical Agencies and Units*

<b>Recognized Statistical Agency or Unit</b>	<b>Highest Level Organization</b>	<b>Principal Statistical Agency</b>
<u>Bureau of Economic Analysis</u>	Department of Commerce	X

<sup>14</sup> Office of Mgmt. & Budget, Exec. Office of the President, Order Providing for the Confidentiality of Statistical Information, 62 FR 35044 (1997), available at <https://www.govinfo.gov/content/pkg/FR-1997-06-27/pdf/FR-1997-06-27.pdf>.

<sup>15</sup> *Id.* The term “designated” was used in the 1997 Order. For the purposes of this proposed regulation, OMB uses the term *recognized* in this discussion of the history of OMB’s role in identifying these entities to provide consistency across the discussion with the current implementation.

<sup>16</sup> Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA) 72 FR 33362 (June 15, 2007), available at <https://www.govinfo.gov/content/pkg/FR-2007-06-15/pdf/E7-11542.pdf>

<sup>17</sup> See Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units, 79 FR 71610 (Dec. 2, 2014), available at <https://www.govinfo.gov/content/pkg/FR-2014-12-02/pdf/2014-28326.pdf>.

<sup>18</sup> CIPSEA 2018 uses the term “designate” to identify those statistical agencies or units that OMB identifies under section 3562 and therefore are subject to the responsibilities in section 3563. CIPSEA 2018 also uses the term “designate” to identify the three statistical agencies and units given the authority to share business data with each other in section 3576. To avoid confusion in this proposed regulation, the term “recognized” is used, consistent with past practice, to refer to those statistical agencies and units identified under section 3562 and subject to the responsibilities in section 3563.



<u>Bureau of Justice Statistics</u>	Department of Justice	X
<u>Bureau of Labor Statistics</u>	Department of Labor	X
<u>Bureau of the Census</u>	Department of Commerce	X
<u>Bureau of Transportation Statistics</u>	Department of Transportation	X
<u>Center for Behavioral Health Statistics and Quality</u>	Department of Health and Human Services	
<u>Economic Research Service</u>	Department of Agriculture	X
<u>Energy Information Administration</u>	Department of Energy	X
<u>Microeconomic Surveys Unit</u>	Board of Directors of the Federal Reserve System	
<u>National Agricultural Statistics Service</u>	Department of Agriculture	X
<u>National Animal Health Monitoring System</u>	Department of Agriculture	
<u>National Center for Education Statistics</u>	Department of Education	X
<u>National Center for Health Statistics</u>	Department of Health and Human Services	X
<u>National Center for Science and Engineering Statistics</u>	National Science Foundation	X
<u>Office of Research, Evaluation, and Statistics</u>	Social Security Administration	X
<u>Statistics of Income Division</u>	Department of the Treasury	X

*Related authorities.* Critical to a healthy, relevant Federal Statistical System has been the development and implementation of statutes, regulations, policies, and principles (hereafter collectively referred to as “authorities”) to support its growth. Over the years, recognizing challenges faced by the Federal Statistical System as it grew, Congress, the Executive Branch, and outside experts—both nationally and internationally—have built a framework of authorities to address such challenges. For example, as inquiries into business operations, personal lives, and more began to expand and capture more detailed, sometimes sensitive, information, authorities evolved to provide for the necessary protection of such information (i.e., confidentiality) and for such information to only be used for exclusively statistical purposes (i.e., not for enforcement, administrative, or other non-statistical purposes). In addition, maintaining the public’s trust in the statistical information produced by the Federal Statistical System is critical to the usefulness of the statistical information, and authorities have been issued and revised over time to promote the Federal Statistical System’s ability to provide relevant, credible, and objective statistical information. Importantly, many authorities, such as individual entity

authorizing statutes and cross-system statutes, co-exist and are complementary to promote a strong, vibrant, interconnected Federal Statistical System.

What follows are brief descriptions of the most relevant authorities, in order of relevance, to these proposed regulations for the fundamental responsibilities of Recognized Statistical Agencies and Units. These authorities generally support the ability of the Federal Statistical System to create relevant, credible, accurate, and objective statistics in a way that promotes the trust of data providers.

*Evidence Act, CIPSEA 2002, and CIPSEA 2018.* The Evidence Act was enacted on January 14, 2019, and emphasizes collaboration and coordination to advance data and evidence-building functions in the Federal Government by statutorily mandating Federal evidence-building activities, open government data, and confidential information protection and statistical efficiency. It consists of four titles:

#### Title I: Federal Evidence-Building Activities

- \* Requires agency Evidence-Building Plans, Evaluation Plans, and Capacity Assessments
- \* Requires that agencies designate an Evaluation Officer and Statistical Official for the coordination of evaluation and statistical activities, policies, and techniques, respectively
- \* Requires that OMB establish an Advisory Committee on Data for Evidence Building
- \* Requires that OMB issue program evaluation standard and best practices
- \* Requires that OPM establish a program evaluation job series and career path

#### Title II: OPEN Government Data Act

- \* Requires agency Open Data Plans to make government data assets open to the public
- \* Requires agency comprehensive data inventories of all agency data assets

- \* Requires that agencies designate a Chief Data Officer for the coordination of Title II activities and policies
- \* Requires that OMB establish a Chief Data Officer Council

### Title III: Confidential Information Protection and Statistical Efficiency Act of 2018 (CIPSEA 2018)

- \* Requires that OMB establish a process to recognize new statistical agencies or units
- \* Codifies Statistical Policy Directive No. 1, the “Trust Directive” for the fundamental responsibilities of statistical agencies or units
- \* Presumes accessibility for statistical agencies and units to obtain data from Federal agencies upon request for evidence-building
- \* Expands secure access to CIPSEA data assets
- \* Establishes a standard data application process for researchers
- \* Requires that OMB coordinate and oversee confidentiality and disclosure policies for executive or organizational units identified or designated by the Director of OMB, as statistical agencies or units

### Title IV: General Provisions

- \* Outlines restrictions on disclosure of data
- \* Requires agencies, to the extent practicable, use existing procedures and resources to carry out agency requirements

The Evidence Act was a partial response<sup>19</sup> to the recommendations from the final report of the Commission on Evidence-Based Policymaking (CEP),<sup>20</sup> established in 2016 pursuant to the Evidence-Based Policymaking Commission Act of 2016.<sup>21</sup> The CEP was charged with “[conducting] a comprehensive study of the data inventory, data infrastructure, database security, and statistical protocols related to Federal policymaking and the agencies responsible for maintaining that data” and to make recommendations to Congress related to the access, integration, use, and control of data to facilitate research and evidence-based evaluation of government programs. As part of its conclusions, the CEP emphasized that making data available for statistical purposes to advance evidence-building could place that data at increased risk of being used for nonstatistical purposes in ways that undermine the public’s willingness to provide data to the Federal Statistical System, and thus recognized the need for “strict structural and institutional separation between statistical and nonstatistical uses of data,” noting throughout its final report that a strong legal framework is needed to strengthen privacy and confidentiality protections for the data. The Evidence Act makes strides toward creating this strong legal framework. It mandates a systematic rethinking of government data management to better facilitate access for evidence-building activities and public consumption. The Evidence Act builds upon longstanding principles underlying Federal policies and data infrastructure investments that support information quality, access, protection, and evidence-building. It builds on these principles and provides an improved legal framework for enhancing and safeguarding data access.

The Evidence Act defines evidence as “information produced as a result of statistical activities conducted for a statistical purpose,” and OMB operationalized the definition in OMB

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<sup>19</sup> Foundations for Evidence-Based Policymaking Act of 2018, Pub. L. 115-435, 132 Stat. 5529 (2019), *available at* <https://www.congress.gov/115/plaws/publ435/PLAW-115publ435.pdf>.

<sup>20</sup> Comm’n Evidence-Based Policymaking, *The Promise of Evidence-Based Policymaking* (2017), *available at* <https://bipartisanpolicy.org/wp-content/uploads/2019/03/Full-Report-The-Promise-of-Evidence-Based-Policymaking-Report-of-the-Commission-on-Evidence-based-Policymaking.pdf>.

<sup>21</sup> Evidence-Based Policymaking Commission Act of 2016, Pub. L. 114-140, 130 Stat. 317 (2016), *available at* <https://www.congress.gov/bill/114th-congress/house-bill/1831/text>.

M-19-23 as four interdependent components: foundational fact finding, policy analysis, program evaluation, and performance measurement.

In particular and relevant to these proposed regulations, the Evidence Act creates the roles of Statistical Officials, Evaluation Officers, and Chief Data Officers<sup>22</sup> to promote coordination and collaboration on evidence issues across the entire agency. It also updated and expanded CIPSEA 2002.<sup>23</sup> CIPSEA 2002 established exclusively statistical uses of information collected under a pledge of confidentiality, provided for permitting controlled access to limited-use data through Designated Agent Agreements, and established strong penalties for willful violation of the confidentiality provisions, among other provisions. With enactment of the Evidence Act, CIPSEA 2018 codifies the uniform data protection requirements for Federal statistical collections, sets minimum standards for safeguarding confidential statistical data, and ensures the confidentiality of information collected exclusively for statistical purposes, in addition to numerous other provisions promoting safe and secure expanded access to restricted data.<sup>24</sup> CIPSEA 2018 also:

- (1) codified the four fundamental responsibilities of statistical agencies and units and the role of other Federal agencies in supporting the statistical agencies and units to meet their responsibilities (the subject of this proposed regulation);
- (2) required OMB to develop a process for recognizing additional statistical agencies and units;
- (3) provided a presumption of accessibility to other Federal agencies' data for Recognized Statistical Agencies and Units; and

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<sup>22</sup> 5 U.S.C. 314 (statistical official); 5 U.S.C. 313 (Evaluation Officer); 44 U.S.C. 3520 (Chief Data Officer).

<sup>23</sup> E-Government Act of 2002, Pub. L. 107-347, title V; 116 Stat. 2962 (2002), *available at* <https://www.congress.gov/107/plaws/publ347/PLAW-107publ347.pdf>.

<sup>24</sup> Notably, nothing in CIPSEA 2018 "restrict[s] or diminish[es] any confidentiality protections or penalties for unauthorized disclosure that otherwise apply to data or information collected for statistical purposes or nonstatistical purposes." 44 U.S.C. 3564(h).

(4) required a standard framework to allow expanding access to restricted data and establishment of a Standard Application Process.<sup>25</sup>

*Paperwork Reduction Act of 1995 (PRA)*. The PRA makes OMB responsible, among other requirements, for coordination of the Federal Statistical System through an appointed Chief Statistician of the United States who is a trained and experienced professional statistician.<sup>26</sup> The purpose of this coordination is to ensure the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes.

*Privacy Act of 1974 (Privacy Act)*. The Privacy Act<sup>27</sup> establishes a code of fair information practices that governs handling of information about individuals that is maintained in systems of records by Federal agencies. Among its many requirements are provisions that limit information about individuals maintained by Federal agencies to that which is legally authorized and is relevant and necessary to accomplish an agency purpose and provisions that govern, and in some instances limit, the use and disclosure of information. The Act addresses disclosures for statistical purposes and allows for exemption from certain requirements for records “required by statute to be maintained and used solely as statistical records.”<sup>28</sup> The Privacy Act defines a “statistical record” for its purposes, as a record that is “maintained for statistical research or reporting purposes only and not used in whole or in part in making a determination about an identifiable individual.”<sup>29</sup>

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<sup>25</sup> Office of Mgmt. & Budget, Exec Office of the President, M-23-04, Establishment of Standard Application Process Requirements on Recognized Statistical Agencies and Units Department Support for Implementation of Statistical Policy (Dec. 08, 2023), *available at* <https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-04.pdf>. The Standard Application Process, established in OMB M-23-04, outlines how each Recognized Statistical Agency or Unit shall meet its obligations under CIPSEA 2018 to establish an identical application process for access to confidential statistical data assets. This includes not just the application form, but also the criteria for determining whether to grant an applicant access to the confidential statistical data asset, timeframes for prompt determinations, an appeals process for adverse determinations, and reporting requirements for full transparency of the process.

<sup>26</sup> 44 U.S.C. 3504(e)(7).

<sup>27</sup> 5 U.S.C. 552a.

<sup>28</sup> 5 U.S.C. 552a(b)(5), (k)(4).

<sup>29</sup> 5 U.S.C. 552a(a)(6).

*OMB Statistical Policy Directives*. These provide guidance to Recognized Statistical Agencies and Units, and in some cases other Federal agencies, to promote accuracy, objectivity, reliability, timeliness, and accessibility of Federal statistics. Especially relevant to this proposed regulation is OMB's Directive No. 1,<sup>30</sup> which articulates the four fundamental responsibilities of Recognized Statistical Agencies and Units and defines the requirements governing the design, collection, processing, editing, compilation, storage, analysis, release, and dissemination of statistical information by Recognized Statistical Agencies and Units. The Evidence Act codified, and this proposed regulation is based on, OMB's Directive No. 1. OMB's Statistical Policy Directive No. 2: Standards and Guidelines for Statistical Surveys<sup>31</sup> describes specific practices that support the quality of design, collection, processing, production, analysis, review, and dissemination of information from statistical surveys. OMB's Statistical Policy Directive No. 3: Compilation, Release, and Evaluation of Principal Federal Economic Indicators<sup>32</sup> establishes requirements for Federal agencies regarding the compilation, release, and evaluation of statistical series designated by OMB as Principal Federal Economic Indicators, which are influential and heavily relied upon economic activity measures, including Gross Domestic Product, Consumer Price Index, and the Employment Situation. OMB's Statistical Policy Directive No. 4: Release and Dissemination of Statistical Products Produced by Federal Statistical Agencies<sup>33</sup> establishes requirements for Recognized Statistical Agencies and Units on the release and dissemination of all statistical products, beyond just the Principal Federal Economic Indicators. Recognized Statistical Agencies and Units are required to follow these Directives to ensure that their release of information is equitable across all users, policy-neutral, transparent and understandable to the

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<sup>30</sup> Office of Mgmt. & Budget, Exec. Office of the President, Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units, 79 FR 71610 (Dec. 2, 2014), *available at* <https://www.govinfo.gov/content/pkg/FR-2014-12-02/pdf/2014-28326.pdf>.

<sup>31</sup> Office of Mgmt. & Budget, Exec. Office of the President, Standards and Guidelines for Statistical Surveys, 71 FR 55522 (Sept. 22, 2006), *available at* <https://www.govinfo.gov/content/pkg/FR-2006-09-22/pdf/06-8044.pdf>.

<sup>32</sup> Office of Mgmt. & Budget, Exec. Office of the President, Statistical Policy Directive on Compilation, Release, and Evaluation of Principal Federal Economic Indicators, 50 FR 38932 (Sept. 25, 1985), *available at* [https://archives.federalregister.gov/issue\\_slice/1985/9/25/38908-38934.pdf#page=25](https://archives.federalregister.gov/issue_slice/1985/9/25/38908-38934.pdf#page=25).

<sup>33</sup> Office of Mgmt. & Budget, Exec. Office of the President, Statistical Policy Directive No. 4: Release and Dissemination of Statistical Products Produced by Federal Statistical Agencies 73 FR 12622 (Mar. 7, 2008), *available at* <https://www.govinfo.gov/content/pkg/FR-2008-03-07/pdf/E8-4570.pdf>.

public, and timely to the needs of data users. These and other statistical policies and standards issued by OMB are available at [www.whitehouse.gov/omb/information-regulatory-affairs/statistical-programs-standards/](http://www.whitehouse.gov/omb/information-regulatory-affairs/statistical-programs-standards/).

In addition to the related authorities for the work of Recognized Statistical Agencies and Units, other external entities—both domestic and international—have published their perspectives on how Recognized Statistical Agencies and Units should meet their missions to produce reliable, relevant, credible, and objective Federal statistics. Below is a brief summary of relevant publications, which offer support for many aspects of the proposed regulations.

\* The National Academy of Sciences, Engineering, and Medicine’s *Principles and Practices for a Federal Statistical Agency* (referred to as Principles and Practices). Principles and Practices has guided managerial and technical decisions made by national and international statistical agencies for decades. In the most recent 2021 edition, five principles are identified, which broadly align with the four fundamental responsibilities outlined in the Evidence Act:<sup>34</sup>

- *Relevance to Policy Issues and Society*. Federal statistical agencies must provide objective, accurate, and timely information that is relevant to important public policy issues.
- *Credibility Among Data Users and Stakeholders*. Federal statistical agencies must have credibility with those who use their data and information.
- *Trust Among the Public and Data Providers*. Federal statistical agencies must have the trust of those whose information they obtain.

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<sup>34</sup> Nat’l Acad. Sci., Eng’g, & Med., *Principles and Practices for a Federal Statistical Agency* (7th ed. 2021), available at <https://www.nap.edu/read/25885/>.



- *Independence from Political and Other Undue External Influence.*<sup>35</sup> Federal statistical agencies must be independent from political and other undue external influence in developing, producing, and disseminating statistics.

- *Continual Improvement and Innovation.* Federal statistical agencies must continually seek to improve and innovate their processes, methods, and statistical products to better measure an ever-changing world.

\* *International Principles and Practices.* The United States is not alone in identifying statistical principles and practices, which seek to achieve similar goals as the four fundamental responsibilities in the Evidence Act. The United Nations' *Fundamental Principles of Official Statistics*<sup>36</sup> affirm ten fundamental principles that promote and build the "essential trust of the public in the integrity of official statistical systems and confidence in statistics." These principles ensure that national statistical systems in United Nations member states produce high quality and reliable data by adhering to certain professional and scientific standards. In addition, the *European Statistics Code of Practice*<sup>37</sup> guides European statistical systems by affirming the European Union member nations' commitment to ensuring high quality in the statistical production process, protecting the confidentiality of the information they collect, and disseminating statistics in an objective, professional, and transparent manner.

Over many years and based on lessons learned, responsibilities, standards, and certain protections have been developed and implemented to strengthen the Federal Statistical System's ability to meet its mission reliably and objectively, which requires an appropriate level of

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<sup>35</sup> As defined in the 2021 Principles and Practices, "Undue external influences" are those from outside the [Recognized Statistical Agency or Unit] that seek to undermine its impartiality, nonpartisanship, or professional judgment. However, it remains important for Recognized Statistical Agencies and Units to remain relevant and solicit input from relevant stakeholders, including policy officials, about what information is needed to answer important questions and make informed decisions.

<sup>36</sup> United Nations General Assembly, *Fundamental Principles of Official Statistics* (adopted Jan. 29, 2014), available at <https://unstats.un.org/fpos/>.

<sup>37</sup> European Statistical System Committee, *European Statistics Code of Practice for the National Statistical Authorities and Eurostat* (adopted Nov. 16, 2017), available at <https://ec.europa.eu/eurostat/web/products-catalogues/-/KS-02-18-142>.

autonomy and authority for Recognized Statistical Agencies and Units.<sup>38</sup> The concept of autonomy and authority as proposed to be implemented in this regulation is an important aspect of the ability of Recognized Statistical Agencies and Units to meet their fundamental responsibilities outlined in 44 U.S.C. 3563. Where autonomy or authority are important in some manner for the Recognized Statistical Agency or Unit in meeting their fundamental responsibilities, the discussion of key provisions of these proposed regulations provides more information and detail. This autonomy and authority to meet specific responsibilities must be balanced with other responsibilities and needs of the Recognized Statistical Agency or Unit, as well as other Federal agencies. These proposed regulations aim to explicate where autonomous decision-making authority is important and why.

In addition, because CIPSEA 2018 contemplates a common framework for protecting statistical data, acquiring administrative/program data, and disseminating statistical data securely, it is important to ensure appropriate interagency engagement and coordination to ensure implementation is successful across the board. This proposed regulation seeks to lay the foundation for advancing this common framework, and the organizational structure of agencies and departments in relation to the 16 Recognized Statistical Agencies and Units is important for successful implementation of this proposed regulation. Currently, each of the 16 Recognized Statistical Agencies and Units is part of a larger organization, with varying reporting structures. The heads of some of the Recognized Statistical Agencies and Units are appointed by the President (either with or without Senate confirmation), while others are senior career officials. Some heads of Recognized Statistical Agencies and Units report directly to the Secretary, or equivalent head, of their highest organizational level, such as the Department, while others have several intervening layers of reporting within their organizations. Throughout this regulation, the

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<sup>38</sup> See Foundations for Evidence-Based Policymaking Act of 2017, H. Rep. No. 115-411 (2017), *available at* <https://www.congress.gov/congressional-report/115th-congress/house-report/411> (quoting Statistical Directive No. 1); *see also* Nat'l Acad. Sci., Eng'g, & Med., *Principles and Practices for a Federal Statistical Agency* (7th ed. 2021), *available at* <https://www.nap.edu/read/25885/> (articulating the importance of independence for Recognized Statistical Agencies and Units in meeting their responsibilities) and Comm'n Evidence-Based Policymaking, *The Promise of Evidence-Based Policymaking* (2017), *available at* <https://bipartisanpolicy.org/wp-content/uploads/2019/03/Full-Report-The-Promise-of-Evidence-Based-Policymaking-Report-of-the-Comission-on-Evidence-based-Policymaking.pdf> (noting the importance of independence).

term “parent agency” means every organizational level of an agency, including sub-agencies, offices, components, or units, as well as any organizational units that contain a Recognized Statistical Agency or Unit, but the term does not include the Recognized Statistical Agency or Unit itself.

A different provision of CIPSEA 2018 requires OMB to issue guidance on the requirements and processes for seeking and obtaining OMB “recognition” as a new Recognized Statistical Agency or Unit. That guidance is forthcoming; however, it should be noted that, at a minimum, agencies and units seeking this designation, along with their parent agencies, will be required to demonstrate a commitment to upholding the requirements in these regulations. This is particularly relevant to those agencies and units whose activities are predominantly the design, collection, processing, editing, compiling, storage, analysis, release, and dissemination of information for statistical purposes, but which have not been formally “recognized” by OMB as Recognized Statistical Agencies or Units. Those agencies and units should look to these proposed regulations, along with OMB’s Statistical Policy Directives and the 2021 Principles and Practices,<sup>39</sup> for direction and best practices.

## **E. Discussion of Key Provisions**

This section provides an explanation of the proposed regulations. As a general matter, OMB has followed the approach of adhering to the wider principles and practices contained in Directive No. 1, which contained both the four fundamental principles now codified in the CIPSEA 2018 and gave Recognized Statistical Agencies and Units more specific guidance on how to adhere to those principles. Therefore, in many cases, most of the particular regulatory provisions described in more detail below are drawn directly or slightly adapted from provisions in Directive No. 1. Additional context can be found in the Federal Register Notice announcing

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<sup>39</sup> Nat’l Acad. Sci., Eng’g, & Med., *Principles and Practices for a Federal Statistical Agency* (7th ed. 2021), available at <https://www.nap.edu/read/25885/>.

OMB's adoption of Directive No. 1.<sup>40</sup> After nearly a decade of the Federal Government operating under Directive No. 1, experience has clarified the fundamental responsibilities and how to ensure Recognized Statistical Agencies and Units are able to carry out those responsibilities. In consideration of those experiences, the draft regulation seeks to address challenges, issues, or emerging challenges or issues to create a lasting and effective policy. While there is some overlap between this regulation and Directive No. 1, the intent of this regulation is to address additional ways outside of the current language in Directive No. 1, for example, ensuring Recognized Statistical Agencies and Units have their own websites and have an opportunity to present their own budget requests, to ensure that statistical agencies are able to meet their fundamental responsibilities.

OMB invites comments on any and all aspects of our proposed approach to this rule; in particular, whether it thoroughly and adequately meets our responsibilities under 44 U.S.C. 3563 to direct Recognized Statistical Agencies and Units in meeting their fundamental responsibilities, and agencies in enabling, supporting, and facilitating the Recognized Statistical Agencies and Units in meeting their fundamental responsibilities.

Additionally, OMB requests comments on the regulatory options proposed and described below, as well as these following questions:

(1) How can OMB best articulate the known and expected benefits of this regulatory action?

(2) Under 44 U.S.C. 3563, all agencies are required to enable, support, and facilitate Recognized Statistical Agencies and Units. However, agencies that are in the reporting structure of Recognized Statistical Agencies and Units will likely provide the majority of the support. Under the current proposed regulation, all agencies, components, and units are included under the definition of parent agency.

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<sup>40</sup> Office of Mgmt. & Budget, Exec. Office of the President, Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units, 79 FR 71610 (Dec. 2, 2014), *available at* <https://www.govinfo.gov/content/pkg/FR-2014-12-02/pdf/2014-28326.pdf>.

If OMB were to create a distinction between agencies, what should that distinction be? For example, should a distinction be considered for those in the reporting structure of the Recognized Statistical Agency or Unit? Should a distinction be considered for agencies which do not contain a Recognized Statistical Agency or Unit?

- a. How should OMB draw this distinction?
- b. For what support functions should each distinct group be responsible?
- c. How should each distinct group best enable, support, and facilitate Recognized Statistical Agencies and Units?

(3) OMB seeks comment on how, as it relates to the implementation of the term "parent agency", agencies' unique legal and regulatory responsibilities in relation to the Recognized Statistical Agency or Unit should be considered in this regulation.

(4) Under Proposed Section 1321.9 Compliance Review, OMB proposes three options for consideration as a means for providing accountability for both the Recognized Statistical Agencies and Units and the parent agencies in adhering to the proposed regulation. OMB is interested in whether those options would be adequate accountability measures for Recognized Statistical Agencies and Units or if others should be considered.

- a. Does this regulation provide adequate accountability measures for Recognized Statistical Agencies and Units to ensure they are meeting their fundamental responsibilities? If additional accountability measures are needed, what would additional accountability measures look like?
- b. Does this regulation provide adequate accountability measures for parent agencies to ensure they are enabling, supporting, and facilitating Recognized Statistical Agencies and Units in meeting their fundamental responsibilities? If additional accountability measures are needed, what would additional accountability measures look like?

### **Proposed § 1321.1 – Purpose**

Timely, accurate, objective, and relevant statistical data are the bedrock of evidence-based decision-making. Recognized Statistical Agencies and Units play a vital role in generating data that citizens, businesses, and governments need to make informed decisions. The foundation of these programs is the public's trust; trust in the accuracy and objectivity of the data and trust that any data provided to a Recognized Statistical Agency or Unit under an obligation to keep those data confidential will be kept confidential and will only be used for statistical purposes. OMB is issuing this proposed regulation to implement 44 U.S.C. 3563, which is a set of the requirements under CIPSEA 2018 that will strengthen and support the quality of Federal statistical information.

### **Proposed § 1321.2 – Definitions.**

This proposed regulation defines terms used in the regulation. Definitions were aligned with existing statute and regulation wherever possible, and information about those terms and their alignment is discussed here:

The definitions of “accurate”, “confidentiality”, “objective”, and “relevant” come from 44 U.S.C. 3563(d).

The definition of “agency” includes agencies as defined in 31 U.S.C. 102 and as defined in 44 U.S.C. 3502.

The definition of “confidential statistical data” includes all data acquired for exclusively statistical purposes and under an obligation of confidentiality. Under 44 U.S.C. 3563(a)(1)(D), Recognized Statistical Agencies and Units are responsible for “ensuring the confidentiality and exclusive statistical use” of the information they acquire. This proposed definition is consistent with the statutory definition of confidentiality under 44 U.S.C. 3563(d)(2), which refers to “an obligation not to disclose that information to an unauthorized party” and the statutory language in 44 U.S.C. 3572(f) which provides a penalty for the disclosure of information acquired “for

exclusively statistical purposes” the disclosure of which is prohibited under Subchapter III of Chapter 35 of Title 44, United States Code.

The definition of “dissemination” is from OMB Circular A-130.

The definition of “identifiable form” comes from 44 U.S.C. 3561. For this proposed regulation, “individual or entity” is used in place of “respondent” in an effort to include individuals or entities who may not directly provide their information to a Recognized Statistical Agency or Unit, but whose information was provided by another individual or entity or could be determined based on other information available.

The definitions of “nonstatistical purpose”, “respondent”, “statistical activities”, and “statistical purpose” also come from 44 U.S.C. 3561.

The definition of “information” is from the OMB Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies.<sup>41</sup>

The definitions of “information system” and “statistical laws” come from 44 U.S.C. 3502.

The definition of “parent agency” includes the full organizational structure, including every organizational level (including sub-agencies, offices, components, and units within the highest organizational level such as the Department), as well as the highest organizational level such as the Department, including any agency and aside from the Recognized Statistical Agency or Unit, and any organizational units that contain the Recognized Statistical Agency or Unit.

The definition of “statistical press release” comes from OMB Statistical Policy Directive No. 4.

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<sup>41</sup> Office of Mgmt. & Budget, Exec. Office of the President, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication, 67 FR 8452 (Feb. 22, 2002), *available at* <https://www.govinfo.gov/content/pkg/FR-2002-02-22/pdf/R2-59.pdf>.

The definition of “statistical products” also comes from OMB Statistical Policy Directive No. 4,<sup>42</sup> except there is an additional clarification that statistical products take many different forms including both printed and electronic form. It is important from a confidentiality perspective that statistical products based on confidential statistical data not identify an individual or entity. Statistical products may be based on confidential statistical data or other data obtained by a Recognized Statistical Agency or Unit. In addition, both printed and electronic forms of statistical products are included to clarify that statistical products can be issued in different ways as technology and society advance and change.

The definition of “timeliness” (or “timely”) is meant to capture both the release happening at the expected time, as well as the release occurring at a reasonable time following the event being measured.

### **Proposed § 1321.3 – General Provisions**

This section describes the scope of the proposed regulations, the impact on existing OMB guidance and policies, including that these proposed regulations if finalized would supersede any provisions within Statistical Policy Directives that conflict, and the parties responsible for carrying out these proposed regulations.

### **Proposed § 1321.4 – The Four Fundamental Responsibilities**

To operate efficiently and effectively, the Nation relies on the flow of objective, credible statistics to support the decisions of individuals, households, governments, educational institutions, businesses, advocacy groups, civic organizations, and other parts and members of society. Any loss of trust in the accuracy, objectivity, or integrity of the Federal Statistical System and its products has the potential to cause uncertainty about the validity of measures the Nation uses to monitor and assess its performance, progress, and needs, as well as undermine the public’s confidence in the information released by the Government. Consistent with well-

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<sup>42</sup> Statistical Policy Directive No. 4 defines “statistical products” as such: “Statistical products are, generally, information dissemination products that are published or otherwise made available for public use that describe, estimate, forecast, or analyze the characteristics of groups, customarily without identifying the persons, organizations, or individual data observations that comprise such groups. Statistical products include general-purpose tabulations, analyses, projections, forecasts, or other statistical reports.”



established principles, such trust can be maintained by ensuring proper authority and autonomy of Recognized Statistical Agencies and Units and ensuring that Recognized Statistical Agencies and Units have appropriate and adequate authority in making, or consulting with appropriate officials on, decisions that could impact their ability to uphold their fundamental responsibilities. Maintaining trust in the actions of Recognized Statistical Agencies and Units is even more critical given their expanded authorities for accessing data and responsibilities for facilitating evidence building in the Evidence Act.

The four fundamental responsibilities, taken from *Directive No. 1* and codified in 44 U.S.C. 3563(a)(1), protect and enhance public trust in the Recognized Statistical Agencies and Units, which bolsters public trust in their statistical products. The four fundamental responsibilities are:

- (1) to produce and disseminate relevant and timely statistical information;
- (2) conduct credible and accurate statistical activities;
- (3) conduct objective statistical activities; and
- (4) protect the trust of information providers by ensuring the confidentiality and exclusive statistical use of their responses.

**Proposed § 1321.4(a)** identifies that Recognized Statistical Agencies and Units carry the responsibility of fulfilling the fundamental responsibilities and parent agencies play a key role in supporting the ability of the Recognized Statistical Agencies and Units to meet their responsibilities. This is particularly true for the parent agencies that host a Recognized Statistical Agency or Unit. Section 3563(b) states that: “The head of each agency shall enable, support, and facilitate statistical agencies or units in carrying out the responsibilities described in subsection (a)(1).”

Parent agencies must exercise their authorities in a way that allows Recognized Statistical Agencies and Units to meet their fundamental responsibilities. This recognizes the importance of a broad commitment across all government agencies to support statistical agencies and units can

be found in a wide array of domestic and international policies and statements, including seven editions of the National Academies' *Principles and Practices for a Federal Statistical Agency*,<sup>43</sup> *Directive No. 1*, the European Statistics Code of Practice,<sup>44</sup> and the United Nation's Fundamental Principles for Official Statistics,<sup>45</sup> for which the United States is a signatory.

These proposed regulations take no specific position with respect to the placement of a Recognized Statistical Agency or Unit within the organizational structure of the highest organizational unit within which they sit. The Evidence Act, however, provides some direction in this space: (1) by giving an explicitly agency/Department-wide role to the heads of statistical agencies as Statistical Officials to champion, advise, and lead on statistical policy and methods, data quality, and confidentiality;<sup>46</sup> (2) by requiring delegation to the head of a Recognized Statistical Agency or Unit of any Chief Data Officer function needed to ensure compliance with statistical law;<sup>47</sup> and (3) by requiring agencies to ensure that their practices, including organizational placement, “enable, support, and facilitate” the Recognized Statistical Agencies and Units’ ability to comply with fundamental responsibilities.<sup>48</sup>

**Proposed § 1321.4(b)** requires each Recognized Statistical Agency or Unit to maintain a distinctive, outward-facing website<sup>49</sup> with its own domain name and with adequate control over the website content and management to uphold the fundamental responsibilities. Data users and providers (i.e., respondents to statistical collections, including individuals, households, businesses, and organizations) must be able to clearly and easily discern when they are receiving information from or providing information to a Recognized Statistical Agency or Unit. These websites must be clearly branded as belonging to the Recognized Statistical Agency or Unit.

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<sup>43</sup> Nat'l Acad. Sci., Eng'g, & Med., *Principles and Practices for a Federal Statistical Agency* (7th ed. 2021), available at <https://www.nap.edu/read/25885/>.

<sup>44</sup> European Statistical System Committee, *European Statistics Code of Practice for the National Statistical Authorities and Eurostat* (adopted November 16, 2017), available at <https://ec.europa.eu/eurostat/web/products-catalogues/-/KS-02-18-142>.

<sup>45</sup> United Nations General Assembly, *Fundamental Principles of Official Statistics* (adopted Jan. 29, 2014), available at <https://unstats.un.org/fpos/>.

<sup>46</sup> 5 U.S.C. 314; see also Office of Mgmt. & Budget, Exec Office of the President, M-19-23, Phase 1 Implementing of the Foundations for Evidence-Based Policymaking Act of 2018: Learning Agendas, Personnel, and Planning Guidance (July 10, 2019), available at <https://www.whitehouse.gov/wp-content/uploads/2019/07/M-19-23.pdf>.

<sup>47</sup> 44 U.S.C. 3520(d)(1).

<sup>48</sup> 44 U.S.C. 3563(a)(2), 44 U.S.C. 3563(b).

<sup>49</sup> Agencies should follow OMB policies, including M-23-10, when issuing new websites. See <https://www.whitehouse.gov/wp-content/uploads/2023/02/M-23-10-DOTGOV-Act-Guidance.pdf>.

**Proposed § 1321.4(b)(1)** acknowledges the parent agency’s role in enabling, supporting, and facilitating the Recognized Statistical Agency or Unit’s responsibility to maintain a branded website. This responsibility includes ensuring the Recognized Statistical Agency and Unit has the necessary resources to meet their requirements under this regulation. The parent agency should also support the Recognized Statistical Agency and Unit in having the autonomy to maintain the website in a way that ensures that the branding meaningfully reflects the identity of the Recognized Statistical Agency and Unit. They must have the capacity to update the content in a timely manner.

**Proposed § 1321.4(b)(2)** acknowledges the importance of using the website to share key information with the public. The website will communicate to the public a “core mission of [Recognized Statistical Agencies and Units] is to produce relevant and timely statistical information to inform decision-makers in governments, businesses, institutions, and households.”<sup>50</sup> Recognized Statistical Agencies and Units must have in place a strong mission statement that clearly communicates the Recognized Statistical Agency’s or Unit’s objectives and that is further refined through strategic planning. A Recognized Statistical Agency’s or Unit’s mission statement should provide a clear understanding of the scope of its responsibilities and goals, so its stakeholders and users can properly assess whether it is meeting its responsibilities.

The commitment to the mission should then be reflected in the Recognized Statistical Agency’s or Unit’s publicly available strategic plan. This proposed regulation would require each Recognized Statistical Agency and Unit to produce a strategic plan that further describes the Recognized Statistical Agency’s or Unit’s goals and provides specific, measurable objectives and performance metrics. OMB is proposing that these plans should be generally consistent with the statutory requirements for strategic planning,<sup>51</sup> which would require the Recognized

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<sup>50</sup> Office of Mgmt. & Budget, Exec. Office of the President, Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units, 79 FR 71610 (Dec. 2, 2014), *available at* <https://www.govinfo.gov/content/pkg/FR-2014-12-02/pdf/2014-28326.pdf>.

<sup>51</sup> 5 U.S.C. 306.

Statistical Agency or Unit to reassess its goals, objectives, and performance metrics no less than every four years alongside and in alignment with the parent agency's strategic plan. This is an opportunity to reassess the priorities among different statistical programs and the infrastructure needed to support those programs, in light of advances in technologies, use cases, and goals of the Recognized Statistical Agencies and Units, among other purposes, such as reassessing the relevance of different statistical programs. This review should also afford Recognized Statistical Agencies and Units and the parent agency, in a collaborative way, the opportunity to assess the efficiency and effectiveness of the allocation of staff time and resources among programs and initiatives, along with appropriateness of existing financial controls, enterprise risk strategies, and the credibility and defensibility of other business processes of the Recognized Statistical Agencies and Units and parent agency.

Consistent with the spirit of the requirement for the strategic plan, OMB also proposes that any publicly available findings, determinations, or recommendations relevant to the Recognized Statistical Agency or Unit yielded by external evaluations, audits, or other objective reviews conducted by Federal Government entities be made publicly available on the Recognized Statistical Agency or Unit website, as allowable by law, and recommend the Recognized Statistical Agency or Unit also make publicly available on its website concrete, measurable steps that the Recognized Statistical Agency or Unit is taking to remediate such issues in a timely and credible manner.

This section would also require each Recognized Statistical Agency or Unit to identify and gather in a single location on its publicly available website the various pieces of legislation, regulations, and policies, including its own and those of parent agencies, that govern the four fundamental responsibilities of each individual Recognized Statistical Agency or Unit. By the nature of their designation as a Recognized Statistical Agency or Unit under CIPSEA 2018, each Recognized Statistical Agency or Unit will list the Evidence Act, including CIPSEA 2018 (Title III), the OPEN Government Data Act (Title II), and certain requirements under Title I, as well as

any authorizing statute. However, the list should extend much further than relevant statistical laws. For example, they should include any parent agency policies governing the appearance or functionality of websites; governing communication with the press, Congress, or other parties; or governing the quality of information, such as scientific integrity policies. This requirement is based on the demonstrated value of a similar reporting requirement in OMB M-15-03:

*Department Support for Implementation of Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units.*<sup>52</sup> If disagreements arise between the Recognized Statistical Agency or Unit and the parent agency, the head of the Recognized Statistical Agency or Unit and the relevant officials at the parent agency may reach out to OMB through the Administrator of the Office of Information and Regulatory Affairs (OIRA) to discuss and resolve.

The Evidence Act and OMB Statistical Policy Directive No. 1 recognize the essential role of Federal Departments in supporting Recognized Statistical Agencies and Units as they implement these responsibilities. Sharing of Department practices, such as incorporating recognition, support, and clear authority for these responsibilities in Departmental written policies, facilitates interagency identification of strengths and opportunities for improvement. Over time, this engagement, dialogue, and implementation will provide a roadmap for continued nurturing and maintenance toward continued achievement of these responsibilities across the Federal Statistical System.

Accordingly, OMB M-15-03 required each Department and Agency hosting a Recognized Statistical Agency or Unit to report to the OIRA Administrator, within 120 days of the date of publication of the Memorandum, actions it took, were in the process of taking, or were considering to support achievement of the responsibilities identified in OMB Statistical

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<sup>52</sup> Office of Mgmt. & Budget, Exec Office of the President, M-15-03, Department Support for Implementation of Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units (Nov. 26, 2014), *available at* [https://www.whitehouse.gov/wp-content/uploads/legacy\\_drupal\\_files/omb/memoranda/2015/m-15-03.pdf](https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2015/m-15-03.pdf).

Policy Directive No. 1, and to indicate if the basis for such actions was found in statute, Departmental policy, or established Departmental practice.<sup>53</sup>

**Proposed § 1321.4(c)(1)** requires each Recognized Statistical Agency or Unit to produce a budget request<sup>54</sup> specific to their agency, to be clearly presented as the request for the Recognized Statistical Agency or Unit with figures and justification specific to the Recognized Statistical Agency or Unit as part of the highest organizational unit's annual budget submission and process, and to participate directly, accompanied by the highest organizational unit as appropriate, in presenting their agency specific request to OMB. If a Recognized Statistical Agency or Unit does not have sufficient staffing resources or expertise to produce a budget, the parent agency should assign a budget employee to report, in whole or in part, to the head of the Recognized Statistical Agency or Unit. This provision does not circumvent OMB's authorities and responsibilities in reviewing and coordinating the budgets of the Executive Branch more broadly or the parent agencies' authorities and responsibilities in reviewing and coordinating Departmental budgets. This provision is intended to provide transparency for both the Recognized Statistical Agency or Unit to the OMB budget process and for OMB and the highest organizational unit in understanding the resource needs and priorities for the Recognized Statistical Agency or Unit to uphold the four fundamental responsibilities. This requirement will allow OMB to better fulfill its responsibilities under 44 U.S.C. 3504(e)(2) to: "ensure that budget proposals of agencies are consistent with system-wide priorities for maintaining and improving the quality of Federal statistics."

**Proposed § 1321.4(c)(2)** requires parent agencies to provide necessary resources or communicate to OMB through the Office of the Chief Statistician of the United States about the lack of available resources for Recognized Statistical Agencies or Units to carry out their

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<sup>53</sup> *Id.*

<sup>54</sup> In this provision, "budget request" means the request put forward to OMB from the highest organizational unit as part of the fiscal year process for the President's Budget. It encompasses the budget figures, budget justification, supplementary submissions, and other requests from OMB issued to Executive Branch agencies as part of the President's Budget process. Typically, requests in addition to the budget figures and justifications are outlined in "Spring Guidance" issued by OMB each year.

fundamental responsibilities. The ability of a Recognized Statistical Agency or Unit to meet its fundamental responsibilities relies on access to sufficient resources. Parent agencies must take these needs into consideration when developing its annual budget request to OMB and allocating existing resources, offer appropriate transparency about funding decisions particularly to Recognized Statistical Agencies and Units and to OMB. Parent agencies must also allow sufficient autonomy and authority to the Recognized Statistical Agency or Unit in regards to how their positions are allocated among job series, how their staff are selected and trained, and how their budgets are deployed to ensure their ability to meet their four fundamental responsibilities. Additionally, if the head of a Recognized Statistical Agency or Unit identifies a lack of sufficient resources to meet the fundamental responsibilities (e.g., through the agency Capacity Assessment required by Title I of the Evidence Act or other means), the highest organizational unit within which they sit should make efforts to the extent possible to supply the necessary resources. If the highest organizational unit is not able to make the required resources available, it must notify OMB through the annual budget request process and in accordance with 44 U.S.C. 3504(e)(2), which requires the Director of OMB to “ensure that budget proposals of agencies are consistent with system-wide priorities for maintaining and improving the quality of Federal statistics.”

**Proposed § 1321.4(c)(3)** seeks to promote greater communication, collaboration, and understanding between the Recognized Statistical Agency or Unit and its parent agency by ensuring that they both have staff that are capable of communicating effectively with each other when the Recognized Statistical Agency or Unit must rely on the parent agency’s support functions. As codified in the Evidence Act, Recognized Statistical Agencies and Units have unique responsibilities, which may require unique provision of support services, including information technology (IT), legal services, procurement, budget, human resources, or other core functions of an agency. This section requires that Recognized Statistical Agencies and Units have the necessary staffing resources to have sufficient expertise to communicate the needs of the Recognized Statistical Agency or Unit to its parent agency. Similarly, this section requires

that the parent agency has someone that is responsible for understanding the needs of the Recognized Statistical Agency or Unit in each support function that the Recognized Statistical Agency or Unit must rely upon.

**Proposed § 1321.4(c)(4)** seeks to promote the ability of Recognized Statistical Agencies and Units to collaborate with their parent agencies to establish joint requirements for services to be shared across the Recognized Statistical Agency or Unit and other agencies (whether within the same organization or across organizations), hereafter “shared services.” OMB recognizes the value of shared services and the efficiencies and cost savings they can generate. In general, OMB encourages Recognized Statistical Agencies and Units and the parent agencies to collaborate to find shared services solutions that meet the requirements of the Recognized Statistical Agencies and Units as well as achieve the goals of efficiency and cost saving behind many of the shared services priorities. This regulation requests comments on two methods of achieving this collaboration.

***Proposed § 1321.4(c)(4) Option A*** These provisions will minimize the risk that lack of independently controlled shared services poses to the ability of a Recognized Statistical Agency or Unit to meet its fundamental responsibilities. Clear requirements for services are important to successful mission implementation. For example, a Recognized Statistical Agency or Unit must be able to ensure that IT staff who have physical or logical access to stored confidential statistical data adhere to the requirements and be subject to the criminal penalties of CIPSEA 2018 and any other relevant policies and procedures of CIPSEA 2018. Both the Recognized Statistical Agency or Unit and the parent agency shall make good faith efforts to achieve such agreement. If disagreements about shared services arise between the Recognized Statistical Agency or Unit and the parent agency, the head of the Recognized Statistical Agency or Unit and the relevant officials at the parent agency may reach out to OMB through the Administrator of OIRA to discuss and resolve. To reduce the potential for disagreement, the ICSP and the Chief



Information Officers (CIO) Council should work together to share best practices and successful arrangements with parent agencies and Recognized Statistical Agencies and Units.

To ensure that shared and consolidated services do not impede a Recognized Statistical Agency or Unit's ability to meet their fundamental responsibilities, the specific requirements for shared services must be clearly developed and communicated with the parent agency in writing, and the parent agency must ensure that the services meet these requirements. If the parent agency is unable to meet these requirements, they must enable the Recognized Statistical Agency or Unit to obtain those services elsewhere.

Recognized Statistical Agencies and Units must be able to enter agreements for service with parent agencies without endangering their ability to uphold their fundamental responsibilities. This provision seeks to minimize the risk that lack of independent control over services used by the Recognized Statistical Agency and Unit poses to the ability of a Recognized Statistical Agency or Unit to meet its fundamental responsibilities. When services are intended to be used by the Recognized Statistical Agency or Unit and parent agencies (i.e., not solely servicing the Recognized Statistical Agency or Unit), the requirements for those services, such as IT, printing, and contracting, must be established and adhered to jointly by the Recognized Statistical Agencies and Units and parent agencies. For example, a Recognized Statistical Agency or Unit must have the ability to hold an open competition to acquire services that support the mission if the current options do not meet the requirements necessary for the Recognized Statistical Agency or Unit to uphold their fundamental responsibilities.

OMB considered an alternative to this proposed provision that would require the Recognized Statistical Agencies and Units to carry out all functions autonomously. However, this would be inefficient and infeasible for most agencies.

***Proposed § 1321.4(c)(4) Option B*** provides a flexible process for Recognized Statistical Agencies and Units and their parent agencies, which provides space for those agencies that are working well together to keep their current processes, while also providing an opportunity for

agencies to engage in a more structured process. Recognized Statistical Agencies and Units have unique needs that may require specifically defined services or software. This section requires parent agencies to consult with Recognized Statistical Agencies or Units prior to making a binding decision regarding services or software that will directly affect the Recognized Statistical Agency or Unit's ability to meet their fundamental responsibilities. Depending on the Recognized Statistical Agency or Unit, the services may include cloud computing, email servicing, janitorial staffing, or any other type of staffing. For some agencies, a simple conversation between parent agency and Recognized Statistical Agency or Unit will suffice. For others, the parent agency may ask for a written list explicitly defining the requirements needed for the particular service. When necessary or valuable, the Recognized Statistical Agency or Unit can ask that any agreement they reach is reduced to writing, which will provide clarity about the expectations for the provision of the service. In some cases, a parent agency will not be able to meet the needs of the Recognized Statistical Agency or Unit in a manner that ensures the fundamental responsibilities are met. In those cases, the Recognized Statistical Agency or Unit may obtain the service elsewhere and the parent agency will need to either ensure the resources are available for the Recognized Statistical Agency or Unit to meet their needs through other means, or the parent agency will need to notify OMB that the Recognized Statistical Agency or Unit lacks the resources necessary to carry out their fundamental responsibilities.

**Proposed § 1321.4(d)** requires that Recognized Statistical Agencies and Units have the appropriate decision-making authority within their agencies for the specified provisions.

(Appropriate is described further in the relevant key provisions above for the Recognized Statistical Agency or Unit.) The Evidence Act recognizes assigning authority appropriately when it created the new statutory role of the Chief Data Officer (CDO) in 44 U.S.C. 3520. Section 3520 requires CDOs to delegate their authorities in that section to the heads of Recognized Statistical Agencies and Units when necessary to comply with statistical laws.<sup>55</sup>

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<sup>55</sup> 44 U.S.C. 3502(23).

These sections of the regulation follow this delegation model in section 3520 to ensure that other agency officials in addition to CDOs are not bearing responsibilities that are given to the heads of Recognized Statistical Agencies and Units in section 3520 and other statistical laws. The intent is to place responsibility and authority with the appropriate agency officials with regard to statistical data and statistical products.

**Proposed § 1321.4(e)(1)** directs parent agencies to review their regulations, policies, and practices, and revise any that impede a Recognized Statistical Agency's or Unit's ability to meet its statutory responsibilities because agency regulations, policies, and practices are so central to accomplishing the purpose of section 3563(b). The existing regulations, policies, and practices of parent agencies can affect a Recognized Statistical Agency's or Unit's ability to meet its fundamental responsibilities in several ways. Regulations, policies, and practices that require review and approval from officials external to the Recognized Statistical Agency or Unit for their statistical products, statistical press releases, website appearance and content, and other communications to external stakeholders such as the press and the Congress specifically addressing statistical products or statistical press releases can create perceived and actual risk of interference with the Recognized Statistical Agency or Unit. Actual or perceived undue influence harms the Recognized Statistical Agency or Unit, undermining trust and support for both. Parent agencies must assess their regulations, policies, and practices and revise any that do not enable, support, and facilitate the ability of their Recognized Statistical Agency or Unit to meet their fundamental responsibilities. If disagreements arise between the Recognized Statistical Agency or Unit and the parent agency as to the revision of any parent agency regulation, policy, or practice, the head of the Recognized Statistical Agency or Unit and the relevant officials at the parent agency may reach to OMB through the Administrator of OIRA to discuss and resolve.

One of the most challenging institutional factors affecting the fundamental responsibilities are overlapping or unclear lines of authority between the heads of Recognized

Statistical Agencies and Units and other parent agency officials with authorities that directly affect the fundamental responsibilities, such as CDOs, Evaluation Officers, Chief Information Officers (CIOs), Senior Agency Officials for Privacy (SAOPs), and others. Similarly, statistical activities can at times directly affect the responsibilities of these other senior officials. Often these overlapping authorities originate in statute and adjudicating them can be challenging. These regulations identify the decisions and authorities that are key to the ability of the Recognized Statistical Agencies and Units to uphold their fundamental responsibilities, and requires either delegation to or consultation with the head Recognized Statistical Agency or Unit the Recognized Statistical Agency or Unit.

**Proposed § 1321.4(e)(2)** requires consideration of the fundamental responsibilities of Recognized Statistical Agencies and Units when parent agencies develop new regulations, policies, and practices that may affect the four fundamental responsibilities. If disagreements arise between the Recognized Statistical Agency or Unit and the parent agency as to any new parent agency regulation, policy, or practice, the head of the Recognized Statistical Agency or Unit and the relevant officials at the parent agency may reach to OMB through the Administrator of OIRA discuss and resolve.

The proliferation of new data sources, uses, and authorities within Federal agencies requires a coordinated and inclusive approach. The agency Data Governance Body required in OMB's M-19-23 *Phase 1 Implementation of the Foundations for Evidence-Based Policymaking Act of 2018: Learning Agendas, Personnel, and Planning Guidance*<sup>56</sup> should be the primary mechanism for coordinating the authorities within an agency for developing data governance policies in a manner that accounts for the four fundamental responsibilities of Recognized Statistical Agencies and Units. OMB M-19-23 implementation guidance articulates the expectation that data governance "responsibility is shared among multiple parties" and that data

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<sup>56</sup> Office of Mgmt. & Budget, Exec Office of the President, M-19-23, Phase 1 Implementing of the Foundations for Evidence-Based Policymaking Act of 2018: Learning Agendas, Personnel, and Planning Guidance (July 10, 2019), *available at* <https://www.whitehouse.gov/wp-content/uploads/2019/07/M-19-23.pdf>.

governance bodies should set agency data policy that “complements, but does not supplant the authority of established positions.”

**Proposed § 1321.4(e)(3)** specifies that timely updates and corrections to statistical products are an important factor in maintaining the trust of the public in the statistics produced and disseminated by Recognized Statistical Agencies and Units. If necessary, parent agencies must support the publication of updates and corrections as quickly as is feasible once they are ready for public release. For example, in cases where the parent agency controls the IT resources required to publish corrections, the parent agency must support the Recognized Statistical Agency or Unit in publishing on its website as quickly as is feasible after the correction is ready for public release.

This also requires each parent agency to develop policies articulating how the parent agency will facilitate the Recognized Statistical Agency's or Unit's ability to meet its responsibility for producing relevant and timely statistical products and make those policies available to the public. These policies should be developed in collaboration with the Recognized Statistical Agency and Unit. This requirement creates additional transparency and accountability to further mitigate the risks posed by reliance on parent agency resources and services.

**Proposed § 1321.4(f)** requires OMB to conduct its coordination of Federal information policy in a manner consistent with the Evidence Act and these regulations. The Evidence Act's requirement under 44 U.S.C. 3563(a)(2) for the head of each Federal agency to enable, support, and facilitate Recognized Statistical Agencies and Units in carrying out their fundamental responsibilities extends beyond the Federal agencies that contain a Recognized Statistical Agency or Unit. Notably, OMB has a variety of authorities that directly affect the ability of Recognized Statistical Agencies and Units to meet their responsibilities. This section requires OMB to exercise those authorities in a manner consistent with the Evidence Act requirements and the provisions of this regulation.

This provision identifies specific statutory authorities of OMB found in Chapter 35 of Title 44 of the U.S. Code. These authorities are so central to the objectivity and accuracy of statistical products generated by Recognized Statistical Agencies and Units that the provision requires that they be delegated to the Chief Statistician of the United States, a position in OMB created by section 3504(e)(7) specifically to coordinate and oversee the Federal Statistical System and its efficiency and effectiveness. Section 3504(e)(7) also specifies that the Chief Statistician of the United States must be “a trained and experienced professional statistician.”

This provision does not diminish OMB’s coordination and oversight authorities, rather it ensures that the specified authorities are exercised without regard to any particular political or program impacts, as the Chief Statistician of the United States is statutorily required to ensure objectivity and impartiality of information collected for statistical purposes. OMB’s role is also important to promote comparability of statistics across the Federal Government, as well as to promote high quality statistics in support of informed decision-making by both public and private statistical data users. The specific authorities delegated to the Chief Statistician of the United States in this provision are:

(1) The review and approval of proposed information collections submitted by Recognized Statistical Agencies and Units under the PRA. OMB review and approval ensures that surveys and other information collections maximize utility while minimizing burden to businesses and the public. Delegating the authority for this function at OMB to the Chief Statistician of the United States is consistent with other provisions in this regulation<sup>57</sup> whose intent is to provide Recognized Statistical Agencies and Units with the maximum feasible control over the content of their statistical products, while preserving data quality and comparability government-wide. This delegation is also in alignment with the functions in the PRA for the Chief Statistician of the United States to ensure the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes, as

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<sup>57</sup> See for example §§ 1321.5 and 1321.7.

well as to oversee the implementation of Federal Government-wide statistical standards and guidelines.

(2) The statistical policy and coordination functions described in section 3504(e), including the development and implementation of governmentwide policies, principles, standards, and guidelines concerning statistical collection procedures and methods, statistical data classification, statistical information presentation and dissemination, timely release of statistical data, and such statistical data sources as may be required for the administration of Federal programs. Similar to the requirement in proposed § 1321.7(b)(1) which directs agencies to allow Recognized Statistical Agencies and Units to publish statistical products without requiring clearance of the content from offices or officials outside of the Recognized Statistical Agency or Unit, this provision ensures that the Chief Statistician of the United States has the necessary authority within OMB to carry out their functions in an objective, impartial, and timely manner that only takes into account statistical considerations, and without interference.

(3) The coordination and oversight of confidentiality and disclosure policies established in 44 U.S.C. 3562, which requires OMB to develop a process to designate agencies or organizational units as Recognized Statistical Agencies and Units, along with implementation guidance for this process. Because the Chief Statistician of the United States has the responsibility to oversee and coordinate the Recognized Statistical Agencies and Units, the Chief Statistician of the United States must also have an appropriate level of control over the designation process and associated guidance.

(4) The functions assigned to OMB through regulation or policy promulgated under CIPSEA 2018. This would include responsibilities under this regulation, administration of the Standard Application Process, and several other forthcoming regulations.

#### **Proposed § 1321.5 – Relevance and Timeliness**

The first fundamental responsibility of Recognized Statistical Agencies and Units is to produce and disseminate relevant and timely statistical information. At the core of this responsibility is recognizing the high value of some statistical products. The Evidence Act entrusts Recognized Statistical Agencies and Units with the responsibility of making judgments about balancing the value of their statistical products against their costs, burden, and risk; it maintains high expectations about Recognized Statistical Agencies' and Units' expertise in and commitment to producing the most relevant statistics. Section 1321.5 articulates these high expectations by requiring Recognized Statistical Agencies and Units to take several actions.

**Proposed § 1321.5(a)** requires Recognized Statistical Agencies and Units to produce and disseminate relevant and timely statistical information and for the parent agencies to enable, support, and facilitate the activities necessary to carry out that responsibility. To carry out this responsibility, Recognized Statistical Agencies and Units must be able to determine what statistical products to disseminate and the timing of dissemination. Recognized Statistical Agencies and Units should engage with parent agencies about what statistical products would be most valuable from the perspective of the parent agency and prioritize consideration of how to address those needs.

**Proposed § 1321.5(b)** adopts the provision in Directive No. 1 for Recognized Statistical Agencies and Units to “be knowledgeable about the issues and requirements of programs and policies relating to their subject domains. This requires communication and coordination among agencies and within and across Departments when planning information collection and dissemination activities,”<sup>58</sup> including through the stakeholder engagement process on Learning Agendas, per OMB policy, for example OMB M-19-23 and OMB M-21-27.<sup>59</sup> “In addition, [Recognized Statistical Agencies and Units] must seek input regularly from the broadest range of

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<sup>58</sup> Office of Mgmt. & Budget, Exec. Office of the President, Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units, 79 FR 71610 (Dec. 2, 2014), *available at* <https://www.govinfo.gov/content/pkg/FR-2014-12-02/pdf/2014-28326.pdf>.

<sup>59</sup> Such OMB policies include M-19-23, M-21-27, and Circular A-11 Section 290.



private- and public-sector data users.”<sup>60</sup> It is the core mission of Recognized Statistical Agencies and Units to produce relevant and timely statistical information to inform decision-makers in governments, businesses, institutions, and households.

This regular and continued input from a broad range of users, including from officials in the parent agency, is essential for determining data needs, and Recognized Statistical Agencies and Units must regularly and continually collaborate with other Federal agencies in order to promote a strong Federal Statistical System. Recognized Statistical Agencies and Units must keep abreast of the interests and analytic goals of current and potential new users of statistical products including data assets for research in order to ensure the continued relevance of their statistical products. Moreover, the information sought may often span the mission areas of more than one Recognized Statistical Agency or Unit, necessitating joint engagement of users both within and possibly outside of government. Effective Recognized Statistical Agencies and Units seek opportunities to enhance the value of their statistical products. These collaborations may extend beyond other Recognized Statistical Agencies and Units and may take many forms, including bilateral and multilateral agreements between agencies. Examples of collaborative efforts include two Recognized Statistical Agencies or Units using one collection to satisfy the needs of both, or a system-wide initiative to fund methodological research.

Recognized Statistical Agencies and Units must pay continual attention to changes in policy and the social and economic conditions affecting their programs and subject domains, including through regularly engaging with officials at parent agencies to understand changing and emerging needs across the parent agencies relevant to the statistical products of the Recognized Statistical Agencies and Units. In instances where feedback necessitates planning a new information collection or revising an existing information collection, Recognized Statistical Agencies and Units may need to consult with OMB, as the agency responsible for coordinating

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<sup>60</sup> Office of Mgmt. & Budget, Exec. Office of the President, Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units, 79 FR 71610 (Dec. 2, 2014), *available at* <https://www.govinfo.gov/content/pkg/FR-2014-12-02/pdf/2014-28326.pdf>.

statistical activities in the Federal Government. There are numerous ways for Recognized Statistical Agencies and Units to further the collaboration with OMB and other Federal entities, such as participating in the Interagency Council on Statistical Policy (ICSP), participating in multi-agency advisory groups, convening or participating in working groups or workshops with other offices within their respective Federal Agencies or Departments that have similar responsibilities or are stakeholders in their data, or participating in working groups or workshops and engaging with other Recognized Statistical Agencies and Units across the Federal Government that have similar responsibilities or are stakeholders in their data.

Recognized Statistical Agencies and Units must also use formal methods available to them for obtaining input from users on issues relating to their programs, products, and underlying data. This should include a mix of techniques including, but not limited to, convening an advisory or user group, as allowed under relevant law; conducting a user survey; holding user workshops; conducting user focus groups; analyzing internet activity; analyzing data requests including those through the Standard Application Process required under 44 U.S.C. 3583; and providing notification and seeking general input through Federal Register notices. Importantly, these activities should be done in compliance with, and leveraging, other relevant authorities.

Parent agencies should support the responsibility to be relevant by facilitating activities that promote ways for the Recognized Statistical Agency or Unit to learn about data user needs. This section also specifies that advisory groups and other means of systematic engagement with interested parties and communities should be part of the process of developing timely and relevant statistical products. As part of that process, the Recognized Statistical Agency or Unit must be allowed to establish and manage these engagements without undue influence from parent agencies on the composition of groups or the content of their agendas or products. However, this does not prevent the Recognized Statistical Agency or Unit from considering input from parent agencies. This requirement reflects practices promoted by the National Academies and the policies in the recent *Presidential Memorandum on Restoring Trust in Government*

*Through Scientific Integrity and Evidence-Based Policymaking*,<sup>61</sup> (PM 2021) which reaffirms and builds on the Presidential Memorandum of March 9, 2009 (PM 2009), and the Director of the Office of Science and Technology Policy’s Memorandum of December 17, 2010 (OSTP 2010). The PM identifies that scientific information, including statistics, are central to sound policy development and improvement and equitable delivery of services across government. Because of this, it notes that “[s]cientific findings should never be distorted by political considerations.” Further, it identifies that improper political interference in science “undermines the welfare of the Nation, contributes to systemic inequities and injustices, and violates the trust that the public places in government to best serve its collective interests.”

As part of the work required by PM 2021, OSTP issued the Framework for Federal Scientific Integrity Policy and Practice (SI Framework) in January 2023.<sup>62</sup> The Framework affirms that “[strong scientific integrity] policies and effective practices protecting scientific integrity are essential for the development of evidence-based policies.”<sup>63</sup> The SI Framework makes a distinction between “interference” and “political interference.” Interference is defined as “inappropriate, scientifically unjustified intervention in the conduct, management, communication, or use of science. It includes censorship, suppression, or distortion of scientific or technological findings, data, information, or conclusions; inhibiting scientific independence during clearance and review; scientifically unjustified intervention in research and data collection; and inappropriate engagement or participation in peer review processes or on Federal advisory committees.” Whereas “political interference” is limited to interference “conducted by political officials and/or motivated by political considerations.” Consistent with the SI Framework, this regulation is intended to guard against inappropriate, statistically unjustified

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<sup>61</sup> Office of Mgmt. & Budget, Exec. Office of the President, Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking, 86 FR 8845 (Feb. 10, 2021), *available at* <https://www.govinfo.gov/content/pkg/FR-2021-02-10/pdf/2021-02839.pdf>.

<sup>62</sup> A Framework for Federal Scientific Integrity Policy and Practice (Jan. 2023), *available at* <https://www.whitehouse.gov/wp-content/uploads/2023/01/01-2023-Framework-for-Federal-Scientific-Integrity-Policy-and-Practice.pdf>.

<sup>63</sup> Press Release, OSTP, OSTP Releases Framework for Strengthening Federal Scientific Integrity Policies and Practices (Jan. 12, 2023), *available at* <https://www.whitehouse.gov/ostp/news-updates/2023/01/12/ostp-releases-framework-for-strengthening-federal-scientific-integrity-policies-and-practices/>.

interventions by ensuring statistical activities are conducted by statistical agencies without undue influence.

OMB intends this regulation to be complementary to the SI Framework and related principles. This is consistent with the intent of the SI Framework, which provides that “Agencies should consult OMB’s implementing guidance, (including OMB M-19-23, OMB M-20-12, and OMB M-21-27, and Statistical Policy Directive 1) to ensure that scientific integrity policies and procedures complement and reinforce related requirements of the Evidence Act.” The SI Framework also acknowledges that in some cases, subordinate agencies may need to “enact stronger policies than their parent [agencies]” and that the parent agencies should not inappropriately influence agency Scientific Integrity matters.

**Proposed § 1321.5(c)** requires Recognized Statistical Agencies and Units to minimize the time required between collection of data and release of the statistical products, subject to costs and effects on other dimensions of data quality. The interval between the time to which the data or estimates refer and the date when the data or estimates are released should be as short as practicable to promote the usefulness and value of the data and to remove the appearance of any intervention. Timely release of statistical products promotes the usefulness and value of the data in both government and private decision-making, in measuring economic activity, and for other uses of the data.

OMB policies have long recognized that “prompt release ... is of vital importance to the proper management of both private and public affairs.”<sup>64</sup> For example, timeliness is critically important for statistical series used by the government and private sector as indicators of the current condition and direction of the economy, such as the Employment Situation and Gross Domestic Product. Timeliness allows policymakers and the private sector to react promptly to any changes and more quickly implement targeted policies. In support of a prompt release, OMB

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<sup>64</sup> Office of Mgmt. & Budget, Exec. Office of the President, Circular A-91, *Prompt Compilation and Release of Statistical Information* (Feb. 12, 1969).

policies provide direction on how many working days to afford between the collection of data and release of data for principal statistical series, with a current standard of no more than 22 working days for Principal Federal Economic Indicators<sup>65</sup> and a minimal practicable interval for other Federal statistical data products.<sup>66</sup> In addition to promoting the usefulness and value of statistical data products, prompt release reduces the likelihood of any unauthorized disclosure or premature release of the data or estimates.

In addition, Recognized Statistical Agencies and Units shall follow OMB guidance implementing section 3583, which will include criteria for prompt determinations about granting access to data for evidence building by Recognized Statistical Agencies and Units.<sup>67</sup>

**Proposed § 1321.5(d)** requires each Recognized Statistical Agency or Unit to publish a release calendar on its website noting the date of each regular or recurring statistical product for the upcoming calendar year by no later than the end of the previous calendar year. This timing aligns with the current policy outlined in OMB’s Statistical Policy Directive No. 4. For example, a Recognized Statistical Agency or Unit should publish the calendar year 2024’s release calendar for all regular or recurring statistical products no later than December 31, 2023. In addition, each Recognized Statistical Agency or Unit shall continue to meet any earlier timelines for publishing the release schedule, as required by other policies such as OMB’s Statistical Policy Directive No. 3 for Principal Federal Economic Indicators. For non-regular or non-recurring statistical products, each Recognized Statistical Agency or Unit should publicly announce the date or date range for release as soon as the date or date range is established.

In support of transparency and serving the needs of data users, each Recognized Statistical Agency or Unit shall also designate an office responsible for providing the release

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<sup>65</sup> Office of Mgmt. & Budget, Exec. Office of the President, Statistical Policy Directive on Compilation, Release, and Evaluation of Principal Federal Economic Indicators, 50 FR 38932 (Sept. 25, 1985), *available at* [https://archives.federalregister.gov/issue\\_slice/1985/9/25/38908-38934.pdf#page=25](https://archives.federalregister.gov/issue_slice/1985/9/25/38908-38934.pdf#page=25).

<sup>66</sup> Office of Mgmt. & Budget, Exec. Office of the President, Statistical Policy Directive No. 4: Release and Dissemination of Statistical Products Produced by Federal Statistical Agencies 73 FR 12622 (Mar. 7, 2008), *available at* <https://www.govinfo.gov/content/pkg/FR-2008-03-07/pdf/E8-4570.pdf>.

<sup>67</sup> Office of Mgmt. & Budget, Exec. Office of the President, M-23-04, Establishment of Standard Application Process Requirements on Recognized Statistical Agencies and Units Department Support for Implementation of Statistical Policy (Dec. 08, 2023), *available at* <https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-04.pdf>.

schedule and make the contact information for that office readily available to the public through their website, and through other means, as appropriate. Finally, this section requires that each Recognized Statistical Agency or Unit only make changes to the release schedule after it has been announced for special, unforeseen circumstances and requires that those changes be announced publicly as soon as possible and explained fully. As required by other policies, notification to other entities may also be required, including for example notifying OMB of changes to release dates for Principal Federal Economic Indicators per Directive No. 3. For example, in the past, changes to the release dates of some Principal Federal Economic Indicators have occurred because of Federal Government shutdowns. This requirement to provide a public explanation of such unforeseen circumstances—like a government shutdown—helps prevent the appearance of any partisan intervention.

Publication of release schedules provides data users with a clear expectation of when data are to be released, helping them plan how to use the data. In combination with the timeliness provisions, publication of release dates promotes trust and confidence in the quality and integrity of the data. Publication of release schedules have been required for statistical products in policies as far back as 1969.<sup>68</sup>

To the extent that parent agencies are involved in dissemination activities, they are responsible for adhering to the schedule as well. This may mean that the Recognized Statistical Agency or Unit engages with the parent agency during the development of the schedule so that both parties are aware of factors that may affect the schedule. This should be done as soon as possible. For parent agencies providing IT services or other support functions that may impact dissemination, they must be cognizant of the schedule to avoid creating barriers for the Recognized Statistical Agency or Unit to keeping their promise to the public to meet their publication deadlines.

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<sup>68</sup> Office of Mgmt. & Budget, Exec. Office of the President, Circular A-91, *Prompt Compilation and Release of Statistical Information* (Feb. 12, 1969).

## **Proposed § 1321.6 – Credibility and Accuracy**

The second fundamental responsibility of Recognized Statistical Agencies and Units is to conduct credible and accurate statistical activities. Establishing credibility about the accuracy of the products produced and the scientifically rigorous processes employed to create them is fundamental to the role of a trusted provider of evidence. The more accurate evidence is, the greater value it has to the decision-maker who uses it.

Any statistical product may contain some level of inaccuracy, and statistics always measure underlying concepts or conditions with varying levels of uncertainty. To confidently act on the evidence, data users need to trust that the accuracy of the statistical products is communicated in a forthright, explicit, and transparent manner. In addition, providing public documentation about the methodologies and processes used by the Recognized Statistical Agency or Unit in developing the statistical product promotes credibility in its methods and processes. Section 1321.6 describes several actions that Recognized Statistical Agencies and Units must take to build and protect their credibility so that they can fill this role effectively.

**Proposed § 1321.6(a)(1)** builds on the requirement in *Directive No. 1* for Recognized Statistical Agencies and Units to “apply sound statistical methods to ensure statistical products are accurate” by requiring Recognized Statistical Agencies and Units to develop policies on the quality of their information and their statistical products. The standards must ensure that the data and statistical products are accurate and credible. Recognized Statistical Agencies and Units shall also make those standards available publicly to allow the public to evaluate the quality of the information produced and disseminated.

Directive No. 1 requires Recognized Statistical Agencies “be vigilant in seeking new methods and adopting new technologies to ensure the quality and efficiency of the information they collect and produce.”<sup>69</sup> Recognized Statistical Agencies and Units shall seek new methods,

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<sup>69</sup> Office of Mgmt. & Budget, Exec. Office of the President, Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units, 79 FR 71610 (Dec. 2, 2014), *available at* <https://www.govinfo.gov/content/pkg/FR-2014-12-02/pdf/2014-28326.pdf>.

technologies, techniques, procedures, and data sources to improve the data and information products they publish. This responsibility is especially important in the modern data era. For example, vigilance in seeking new methods and adopting new technologies allowed for the Bureau of the Census Small Area Income and Poverty Estimates Program to release annual estimates of income and poverty for every U.S. county, providing for more granular data by more efficiently using the data collected. In addition, through increased use of satellite data, a newer technology and data source for this purpose, at the National Agricultural Statistics Service, more accurate estimates of crop acreage and production have been produced.

**Proposed § 1321.6(a)(2)** adopts the requirements in *Directive No. 1* that “information about how the data were collected and any known or potential data limitations or sources of error (such as population or market coverage, or sampling, measurement, processing, or modeling errors) should be described to data users so they can evaluate the suitability of the data for a particular purpose” and “(e)rrata identified after data release should be described to data users on an ongoing basis as verified.”<sup>70</sup>

Recognized Statistical Agencies and Units must produce data that are accurate and credible and that allow data users to make sound decisions based on these Federal data and information products. In order to achieve this, Recognized Statistical Agencies and Units shall use rigorous statistical methodologies as well as regularly assess, and update as appropriate, the data and information products they publicly release against OMB and agency information quality guidelines.

Recognized Statistical Agencies and Units must make information about the quality of their statistical products publicly available to allow users to evaluate fitness for use.<sup>71</sup>

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<sup>70</sup> *Id.*

<sup>71</sup> Office of Mgmt. & Budget, Exec Office of the President, M-19-15, Improving Implementation of the Information Quality Act (Apr. 24, 2019), available at <https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-15.pdf> (“Agencies should provide the public with sufficient documentation about each dataset released to allow data users to determine the fitness of the data for the purpose for which third parties may consider using it.”).



In order for data users to assess the suitability of data products for their purposes, each Recognized Statistical Agency or Unit shall publicly provide descriptions of methods and procedures used to develop statistical products, subject to confidentiality and other statutory requirements, and must use plain language as much as possible. In addition, they shall describe how data were collected and compiled, as well as other aspects of the process to create the statistical product and any known data limitations or sources of error such as, population or market coverage, and/or sampling, measurement, processing, or modeling errors. As such, any data used in generating the statistical product, including third party or administrative records, should be included in the description of methods and procedures for applicable part(s) of the process to create the statistical product. Furthermore, to promote transparency and the ability of data users to assess impacts of changes to the data, any errors in the data identified after release (i.e., errata) must be described to data users on an ongoing basis. Similar requirements have been in place for decades under Directive Nos. 3 and 4 covering any unforeseen revisions to the released data.<sup>72</sup>

**Proposed § 1321.6(a)(3)** adopts the requirements in *Directive No. 1* for Recognized Statistical Agencies and Units to “achieve [accuracy in their statistical products] by regularly evaluating the data and information products they publicly release against the OMB Government-wide Information Quality Guidelines as well as their individual [Recognized Statistical Agency or Unit’s] information quality guidelines” and to “periodically review the techniques and procedures used to implement their information quality guidelines to keep pace with changes in best practices and technology.”<sup>73</sup> This section further expands on this practice by requiring

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<sup>72</sup> Office of Mgmt. & Budget, Exec. Office of the President, Statistical Policy Directive on Compilation, Release, and Evaluation of Principal Federal Economic Indicators, 50 FR 38932 (Sept. 25, 1985), *available at* [https://archives.federalregister.gov/issue\\_slice/1985/9/25/38908-38934.pdf#page=25](https://archives.federalregister.gov/issue_slice/1985/9/25/38908-38934.pdf#page=25); Office of Mgmt. & Budget, Exec. Office of the President, Statistical Policy Directive No. 4: Release and Dissemination of Statistical Products Produced by Federal Statistical Agencies 73 FR 12622 (Mar. 7, 2008), *available at* <https://www.govinfo.gov/content/pkg/FR-2008-03-07/pdf/E8-4570.pdf>.

<sup>73</sup> Office of Mgmt. & Budget, Exec. Office of the President, Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units, 79 FR 71610 (Dec. 2, 2014), *available at* <https://www.govinfo.gov/content/pkg/FR-2014-12-02/pdf/2014-28326.pdf>.

Recognized Statistical Agencies or Units to comply with all OMB standards and guidance for lifecycle data management practices.

**Proposed § 1321.6(a)(4)** requires that Recognized Statistical Agencies and Units are responsible for ensuring that, when their staff participates in authoring journal articles, authoring professional conference papers and participates in sessions, and peer review activities those activities adhere to current OMB peer review policies<sup>74</sup> and they should to make these determinations without undue influence from the parent agency.

**Proposed § 1321.6(b)(1)** acknowledges that the ability of a Recognized Statistical Agency or Unit to establish, maintain, and communicate the quality of the data they release is key to their ability to conduct credible and accurate statistical activities, free from even the appearance of manipulation. When any parent agency official external to the Recognized Statistical Agency or Unit plays any formal role in reviewing or approving the statistical product or the quality of the statistical product issued by the Recognized Statistical Agency or Unit, it can create an appearance that the Recognized Statistical Agency or Unit does not have sufficient authority and autonomy. Review or approval of the statistical product in any form creates a real risk that a parent agency could attempt to alter or suppress a statistical product by claiming that it fails to meet the quality standards of the parent agency. Accordingly, parent agency regulations, policies, and practices must clearly demonstrate that Recognized Statistical Agencies and Units have sole authority for oversight of the quality of their statistical products.

In some cases, parent agency officials external to a Recognized Statistical Agency or Unit are authorized by statute to oversee the quality or objectivity of statistical products released by the agency.

When another statute overlaps with the statutory provisions of the Evidence Act regarding quality of statistical products by authorizing another agency to make determinations

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<sup>74</sup> See, e.g., Office of Mgmt. & Budget, Exec Office of the President, M-05-03, Final Information Quality Bulletin for Peer Review (Dec 16, 2004), available at [https://www.whitehouse.gov/wp-content/uploads/legacy\\_drupal\\_files/omb/memoranda/2005/m05-03.pdf](https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2005/m05-03.pdf).

that directly affect a Recognized Statistical Agency's or Unit's ability to carry out its fundamental responsibilities, OMB proposes that the authorized agency official delegate those determinations to the Recognized Statistical Agency or Unit. This proposed approach is similar to the Evidence Act provisions recognizing that the responsibilities of the newly created Chief Data Officers overlap with the responsibilities of the Recognized Statistical Agencies and Units.<sup>75</sup>

OMB considered an alternative regulatory approach to establish that statistical products disseminated by Recognized Statistical Agencies and Units are not subject to any quality standards of their parent agencies. However, while this approach would accomplish the objective of ensuring that Recognized Statistical Agencies and Units are solely responsible for ensuring the quality of their products, it could suggest that Recognized Statistical Agencies and Units could set less stringent quality standards than their parent agencies, which would not be appropriate. Under this proposed approach, the parent agency's quality standards remain in place, but the Recognized Statistical Agency or Unit is solely responsible for evaluating compliance with those standards.

**Proposed § 1321.6(b)(3)** specifies that employees, contractors, and agents of the parent agency or Recognized Statistical Agency or Unit, other than those designated by the releasing Recognized Statistical Agency or Unit head, shall be prohibited from publicly commenting on the content of any data released by the Recognized Statistical Agency or Unit until after the official release of the data. More specifically, for some statistical products such as those covered by Directive No. 3 there are additional requirements, including that no public commentary may be made by employees of the Executive Branch, except for members of the staff of the agency issuing the Principal Federal Economic Indicator who have been designated by the agency head to provide technical explanations of the data, until at least one hour after the official release time.

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<sup>75</sup> 44 U.S.C. 3520(d)(1) ("To the extent necessary to comply with statistical laws, the Chief Data Officer of an agency shall delegate any responsibility under subsection (c) to the head of a statistical agency or unit (as defined in section 3561) within the agency.").

For other statistical products, this provision aligns with the existing Directive No. 4 that contains policies about the independence of policy statements and from the technical data release, as well as provisions for not breaking the data embargo. A prohibition on public comment prior to the official release of the data supports a distinction between the statistical data released and interpretations of the data, including policy interpretations. This distinction is important for the credibility of the Recognized Statistical Agencies and Units and the trust in the accuracy of the data released.

**Proposed § 1321.6(b)(4)** requires that parent agencies provide Recognized Statistical Agencies and Units with the necessary authority to determine how statistical products are released. Some Recognized Statistical Agencies and Units rely on components of their parent agencies to maintain websites or other dissemination platforms. In these cases, the parent agency must not alter the content or appearance of a statistical product unless authorized by the head of the Recognized Statistical Agency or Unit. Policy officials at parent agencies may work with the Recognized Statistical Agency or Unit head to ensure that policy pronouncements are not included.

**Proposed § 1321.6(b)(5)** requires parent agencies to ensure that Recognized Statistical Agencies and Units are permitted to determine the appropriateness of and how their staff engage in peer review and career development activities such as publication in refereed journals, participation in statistical and other scientific associations, and presentation at professional conferences without review or approval from the parent agency, subject to applicable statutes. However, review of publication or participation may be appropriate where the venue also includes matters of policy, budget, or management. The National Academies' Principles and Practices<sup>76</sup> notes that "The long-term credibility of a statistical agency depends on the agency's staff and the culture they build and maintain for quality and professionalism. An agency's subject-matter analysts should

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<sup>76</sup> Nat'l Acad. Sci., Eng'g, & Med., *Principles and Practices for a Federal Statistical Agency* (7th ed. 2021), available at <https://www.nap.edu/read/25885/>.

be encouraged and have ample opportunity to build networks with analysts in other agencies, academia, the private sector, other countries, and relevant international organizations and to present their work at relevant conferences and in working papers and refereed journal articles.”

This provision seeks to ensure the ability of professional staff at the Recognized Statistical Agencies and Units to engage in professional development activities to build their network and skill sets, learn new methodologies to apply to statistical products, and share out the research and development efforts that support the improvements to the Recognized Statistical Agency’s or Units’ statistical products. The National Academies’ Principles and Practices articulates this as important to ensuring the qualifications of technical staff doing the work at Recognized Statistical Agencies and Units.

In doing so, the Recognized Statistical Agencies and Units must ensure that they abide by regulatory, policy, and budgetary requirements that govern these types of activity.

Recognized Statistical Agencies and Units that have internal resources to evaluate adherence to applicable laws and policies should use their own resources. However, some Recognized Statistical Agencies and Units are reliant on support functions of the parent agency. In those cases, the parent agency should consider assigning support function staff to report to the head of the Recognized Statistical Agency or Unit for these purposes. Parent agency support functions supporting the Recognized Statistical Agency or Unit would not have approval authority unless the head of the Recognized Statistical Agency or Unit delegates such authority to the support function. Without such delegated authority, the support function should provide to the head of the Recognized Statistical Agency or Unit sufficient information and analysis for the head of the agency to make an informed decision.

### **Proposed § 1321.7 – Objectivity**

The third fundamental responsibility of Recognized Statistical Agencies and Units is to conduct objective and impartial statistical activities. Impartial statistics are core to the concept of evidence-based policymaking, which is based on the fundamental practice of using facts to guide

policies. To support rigorous decision-making actions, data users need to be able trust that statistical outputs are completely transparent and policy-neutral; they therefore need to rely upon a Recognized Statistical Agency's or Unit's reputation as an impartial source of information. The requirements described in § 1321.7 to implement this responsibility can be divided into two related categories: transparent application of rigorous and best scientific methods to acquire, process, and disseminate data; and protection of the Recognized Statistical Agency's or Unit's ability to control these data processes free from undue influence from outside of the Recognized Statistical Agency or Unit. This section largely adopts several provisions that Recognized Statistical Agencies and Units and parent agencies are already following through their adherence to Directive No. 1.

**Proposed § 1321.7(a)(1)** adopts the requirement in Directive No. 1 for Recognized Statistical Agencies and Units to “produce data that are impartial, clear, and complete and are readily perceived as such by the public.”<sup>77</sup>

**Proposed § 1321.7(a)(2)** adopts the provision in Directive No. 1 that the “objectivity of the information released to the public is maximized by making information available on an equitable, policy-neutral, transparent, timely, and punctual basis.”<sup>78</sup>

It is essential that all data users (e.g., the general public, researchers, media, and private and non-profit entities) are provided equitable access to data released by Recognized Statistical Agencies and Units. To achieve this, Recognized Statistical Agencies and Units shall provide documentation on dissemination policies with respect to scheduling of statistical product releases, requests for special tabulations, and information on data collection periods. Equitable access should cover a variety of platforms keeping in mind ease of use and that all data users should have access to the data at the same time, with limited exceptions for targeted, specified purposes such as the policies set forth in OMB's Statistical Policy Directive No. 3. Equitable

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<sup>77</sup> Office of Mgmt. & Budget, Exec. Office of the President, Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units, 79 FR 71610 (Dec. 2, 2014), *available at* <https://www.govinfo.gov/content/pkg/FR-2014-12-02/pdf/2014-28326.pdf>.

<sup>78</sup> *Id.*

access is meant to provide for delivery in a manner that does not privilege any one person or group over another.

**Proposed § 1321.7(a)(3)** adopts the requirement in *Directive No. 1* for Recognized Statistical Agencies and Units to “avoid even the appearance that agency design, collection, processing, editing, compilation, storage, analysis, release, and dissemination processes may be manipulated. The actual and perceived credibility of Federal statistics requires assurance that the selection of candidates for statistical positions is based primarily on their scientific and technical knowledge, credentials, experience, and integrity. Moreover, Recognized Statistical Agencies and Units must maintain and develop in-house staff who are trained in statistical methodology to properly plan, design, and implement core data collection operations and to accurately analyze their data.”<sup>79</sup>

**Proposed § 1321.7(a)(4)** adopts the requirement in *Directive No. 1* for Recognized Statistical Agencies and Units to “function in an environment that is clearly separate and autonomous from the other administrative, regulatory, law enforcement, or policymaking activities within their respective Departments.” In particular, Recognized Statistical Agencies and Units must be able independently determine how to engage in statistical activities, including what information to collect and process, how to secure and protect confidential statistical data, which estimation methods to use, how to disseminate statistical products, and who to hire.<sup>80</sup> This provision is not meant as a prohibition on parent agencies articulating data needs to Recognized Statistical Agencies and Units; instead, it is meant to clarify that Recognized Statistical Agencies and Units must be allowed to act autonomously in their determinations of how to deliver on those articulated data needs.

This longstanding policy in *Directive No. 1*, proposed in regulation in this action, of “functional separation” reinforces the requirement described in § 1321.6(a)(3) to promote the objectivity of data through ensuring integrity of the process for generating data. In addition,

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<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

functional separation between the Recognized Statistical Agency or Unit and parent agencies is vital to assure the public that collection and handling of all confidential statistical data acquired by a Recognized Statistical Agency or Unit is consistent with CIPSEA 2018 and other applicable confidentiality statutes. Under CIPSEA 2018, Recognized Statistical Agencies and Units cannot provide access to and must avoid the appearance that individually identifiable data acquired by the Recognized Statistical Agency or Unit for exclusively statistical purposes might be accessed for administrative, regulatory, or law enforcement uses. Access to and use of confidential statistical data managed by a Recognized Statistical Agency or Unit must be limited to authorized employees and agents of the Recognized Statistical Agency or Unit who are legally prohibited from using the confidential statistical data for any nonstatistical purpose. Functional separation bolsters a culture and practice of respect for privacy and protection of confidentiality.

Functional separation is also important for other aspects of the data lifecycle, including determining the type of data to collect, dedication of resources, and dissemination of statistical products. Providing this functional separation to the Recognized Statistical Agencies and Units across the data lifecycle promotes trust in the resulting statistical data. The clear distinctions between the Recognized Statistical Agency or Unit and the parent agencies in this work facilitates public perception and also the reality of those decisions being made by the entity responsible for impartial, objective statistical data, and not by entities with other missions and responsibilities. However, functional separation is not meant as a prohibition on parent agencies articulating data needs to Recognized Statistical Agencies and Units; instead, it is meant to clarify that Recognized Statistical Agencies and Units must be allowed to act autonomously in their determinations of how to deliver on those articulated data needs.

Of course, statistical products issued by the Recognized Statistical Agency or Unit, which do not disclose confidential statistical data, can be used to inform aggregate administrative, regulatory, or law enforcement activity, which aligns with the Recognized Statistical Agency's or Unit's responsibility to produce and disseminate relevant and timely statistical information.



**Proposed § 1321.7(b)(1)** prohibits parent agencies, including any other sub-agency, office, or unit outside the Recognized Statistical Agency or Unit, from requiring prior clearance of statistical products, and allows Recognized Statistical Agencies and Units to respond to questions from external stakeholders (e.g., data users, the media, the Congress) about statistical products in a manner that ensures appropriate consultation with the parent agency if responses to questions from external stakeholders relate to policy, budget, or management issues, in addition to matters affecting current or future litigation. On December 17, 2010, the Director of the Office of Science and Technology Policy issued a memorandum that called for Executive departments and agencies to develop policies to “ensure a culture of scientific integrity,” “strengthen the actual and perceived credibility of Government research,” “facilitate the free flow of scientific and technological information, consistent with privacy and classification standards,” and “establish principles for conveying scientific and technological information to the public.”<sup>81</sup>

At the time, the Recognized Statistical Agencies and Units developed a Statement of Commitment to Scientific Integrity that documents in a single place their response to the OSTP memorandum,<sup>82</sup> which includes the following statement: “Independence must include the statistical agency having authority for professional decisions over the scope, content, and frequency of data collected; analysis, or publishing of the information; authority to release statistical information without prior clearance; and adherence to predetermined schedules for public release of statistical information.” Because of the fundamental responsibilities which Recognized Statistical Agencies and Units must uphold and their missions, it is critical that there be no perceived or real interference with the dissemination of statistical products or technical responses to questions from external stakeholders.

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<sup>81</sup> Office of Mgmt. & Budget, Exec. Office of the President, Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking, 86 FR 8845 (Feb. 10, 2021), *available at* <https://www.govinfo.gov/content/pkg/FR-2021-02-10/pdf/2021-02839.pdf>.

<sup>82</sup> Principal Statistical Agencies, Statement of Commitment to Scientific Integrity (2010), *available at* [https://www.census.gov/content/dam/Census/about/about-the-bureau/policies\\_and\\_notices/scientificintegrity/Scientific\\_Integrity\\_Statement\\_of\\_the\\_Principal\\_Statistical\\_Agencies.pdf](https://www.census.gov/content/dam/Census/about/about-the-bureau/policies_and_notices/scientificintegrity/Scientific_Integrity_Statement_of_the_Principal_Statistical_Agencies.pdf).

**Proposed § 1321.7(b)(2)** requires parent agencies to ensure that Recognized Statistical Agencies and Units are permitted to determine and carry out methods for conducting statistical activities for statistical purposes. Recognized Statistical Agencies and Units must function in an environment that is clearly separate and autonomous from nonstatistical (administrative, regulatory, law enforcement, or policymaking) activities within their respective Federal Agency/Department and must be able to conduct statistical activities autonomously. Perceived or real influence on statistical activities by a non-statistical agency interferes with the objectivity and impartiality responsibilities of the Recognized Statistical Agencies and Units and could diminish trust in the resulting statistical data. Note that this provision is not meant as a prohibition on parent agencies articulating data needs to Recognized Statistical Agencies and Units; instead, it is meant to clarify that Recognized Statistical Agencies and Units must be allowed to act autonomously in their determinations of how to deliver on those articulated data needs.

**Proposed § 1321.7(b)(3)** implements the Evidence Act's recognition that the responsibilities and authorities granted to the newly created Chief Data Officers (CDOs) overlap with the authorities and responsibilities essential to a Recognized Statistical Agency's or Unit's ability to meet its fundamental responsibilities. Therefore section 3520(d) requires that, to the extent necessary to comply with statistical laws, the responsibilities granted to CDOs for data governance and lifecycle data management must be delegated in writing to the heads of Recognized Statistical Agencies and Units in order for them to meet their fundamental responsibilities. The Chief Data Officer of the agency shall defer to head of the Recognized Statistical Agency or Unit regarding the necessary delegation of duties with respect to any data acquired, maintained, or disseminated by the agency under applicable statistical law including the authority to certify information collection requests for the Recognized Statistical Agency or Unit under the Paperwork Reduction Act.<sup>83</sup>

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<sup>83</sup> See 44 U.S.C. 3520(d)(3); OMB M-19-23, at 24–25 & n.42.

**Proposed § 1321.7(b)(4) and (5)** require parent agencies to allow Recognized Statistical Agencies and Units to manage resources, including confidential statistical data, in accordance with their responsibility to conduct objective statistical activities. As outlined above for proposed § 1321.7 (a)(4), the functional separation between Recognized Statistical Agencies and Units and parent agencies for this work fosters public trust in the work of the Recognized Statistical Agencies and Units. In particular, data providers must be able to clearly determine if they are providing data to the Recognized Statistical Agency or Unit or a parent agency. There must be functional separation between the administrative, regulatory, or law enforcement parent agency staff within the parent agency and the work accomplished by the Recognized Statistical Agency's or Unit's staff creating and supporting statistical products. For example, IT specialists are critical partners in the production of statistical products. Recognized Statistical Agencies' and Units' IT systems are tasked with conducting and analyzing complex calculations, interactions, and interdependencies that must be executed with precision by IT specialists. It is helpful if IT specialists are familiar with the statistical programs they support.

In consideration of the responsibility of objectivity as it relates to the use of shared services (IT, printing, contracting, etc.), there are different acceptable methods available to parent agencies and the Recognized Statistical Agency or Unit. However, methods must adhere to the provisions in this regulation.

As one example, assigning personnel directly to the Recognized Statistical Agency or Unit affords the agency or unit a straight-forward defense against claims that parent agency personnel have unauthorized access to Principal Federal Economic Indicators or other statistical products. When the numbers produced by a Recognized Statistical Agency or Unit are handled from start to finish by the employees/contractors of the Recognized Statistical Agencies or Unit (and not those of the parent agency), the Recognized Statistical Agency or Unit along with their parent agency are able to easily disprove claims of falsified statistical products or inappropriate access to the statistical products. If agency personnel from outside the Recognized Statistical

Agency or Unit are allowed access to systems responsible for the production and dissemination of statistical products, they must be subject to the same requirements and standards as employees/contractors of Recognized Statistical Agencies or Units to ensure protection against claims from the public of external manipulation and inappropriate influence

Another approach is for Recognized Statistical Agencies and Units to enter into written agreements for shared services with parent agencies that include requirements and controls that uphold the fundamental responsibilities. These requirements and controls would include that all personnel providing the shared service are subject to the same requirements and standards as employees and contractors of Recognized Statistical Agencies or Units (e.g., the personnel are designated as “agents” of the Recognized Statistical Agency or Unit). The parent agency adhering to the requirements and controls in the agreement would provide the needed protections to prevent unauthorized access and to ensure the statistical products are protected from external manipulation and inappropriate influence.

### **Proposed § 1321.8 – Confidentiality**

The fourth fundamental responsibility of Recognized Statistical Agencies and Units is to protect the trust of information providers by ensuring the confidentiality and exclusive statistical use of their data. Data providers rely upon Recognized Statistical Agencies and Units to honor their commitments and statutory requirements to protect the confidentiality of data providers’ information and to ensure that the confidential statistical data are used exclusively for statistical purposes.

The Federal Statistical System is largely dependent on the willingness of individuals; businesses; and Federal, State, local, territorial, and Tribal governments to provide and allow their data to be used for statistical purposes. For example, even the perception that agencies responsible for regulating industries have unauthorized access to data provided to Recognized Statistical Agencies and Units may have a significant impact on survey response rates or on the willingness of a private sector entity to enter into a contract with Recognized Statistical Agency

or Unit, and possibly thereby degrade data quality for those Recognized Statistical Agencies and Units and trust from the public. *Directive No. 1* highlights the importance of protecting the confidentiality of responses because it “reduces public confusion, uncertainty, and concern about the treatment and use of reported information” and articulates the importance of the “organizational climate” by which Recognized Statistical Agencies and Units do their work which builds and sustains the trust of the data providers.<sup>84</sup>

In addition to giving data providers confidence that their confidential statistical data will be protected, these protections also give the general public confidence that the Recognized Statistical Agencies and Units will be responsible stewards of the large amounts of sensitive information with which they are entrusted. The Recognized Statistical Agencies and Units must have the authority to determine the tools, practices, and procedures employed to ensure the effective security, including physical and logical security, of protect the confidentiality of, and provide appropriate access to the confidential statistical data. Such determination includes whether personnel such as economists, statisticians, data scientists, IT specialists, and subject matter experts who access confidential statistical data are to be directly assigned to the Recognized Statistical Agencies and Units.

**Proposed § 1321.8(a)(1)** requires Recognized Statistical Agencies and Units to appropriately secure all confidential statistical data, by ensuring that any information systems containing confidential statistical data employ effective barriers to appropriately restrict access. Current OMB guidance<sup>85</sup> requires Recognized Statistical Agencies and Units to exercise supervision and control over agents authorized to access confidential statistical data. They must rely upon OMB and Department of Homeland Security-issued guidance on implementing the requirements of the Federal Information Security Management Modernization Act of 2014 (FISMA),<sup>86</sup> as amended

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<sup>84</sup> Office of Mgmt. & Budget, Exec. Office of the President, Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units, 79 FR 71610 (Dec. 2, 2014), *available at* <https://www.govinfo.gov/content/pkg/FR-2014-12-02/pdf/2014-28326.pdf>.

<sup>85</sup> Office of Mgmt. & Budget, Exec. Office of the President, Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA), 72 FR 33362 (June 15, 2007), *available at* <https://www.govinfo.gov/content/pkg/FR-2007-06-15/pdf/E7-11542.pdf>.

<sup>86</sup> More information is available at <https://www.cisa.gov/federal-information-security-modernization-act>.

and as codified at 44 U.S.C. 3551-3558, and the National Institute of Standards and Technology (NIST) standards<sup>87</sup> used to identify the level of impact and controls for maintaining the confidentiality, integrity, and availability of all information systems and all information collected or maintained on behalf of a Federal agency or department. If a breach of confidentiality does occur, Recognized Statistical Agencies and Units must follow requirements in law and policy, and establish effective breach reporting procedures in consultation with appropriate agency personnel

**Proposed § 1321.8(a)(2)** requires Recognized Statistical Agencies and Units to ensure that confidential statistical data are not used for any nonstatistical purposes. Efforts to protect against disclosure of confidential statistical data should include instituting a statistical confidentiality disclosure review board, as part of a broader confidentiality program that incorporates training and knowledge sharing, that provides guidance, oversight, and approval for disclosure limitation methods used for publication of data products in a manner that maintains respondent confidentiality.

Ensuring that confidential statistical data is not used for any nonstatistical purpose requires the Recognized Statistical Agency or Unit to have control over who gets access. This requires coordination with the Chief Freedom of Information Act (FOIA) Officer, maintaining supervision over individuals authorized to have access, and employing best practices to minimize the risk of disclosure.

**Proposed § 1321.8(a)(3) and (4)** require Recognized Statistical Agencies and Units to communicate policies and procedures for ensuring confidentiality with data providers through a variety of mechanisms in order to maintain public trust.

**Proposed § 1321.8(a)(5)** specifies requirements for Recognized Statistical Agencies and Units to maintain and develop access to professional staff that are trained in statistical disclosure

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<sup>87</sup> E. McCallister et al., Nat'l Inst. of Standards & Tech, Guide to Protecting the Confidentiality of Personally Identifiable Information (2010), available at [https://tsapps.nist.gov/publication/get\\_pdf.cfm?pub\\_id=904990](https://tsapps.nist.gov/publication/get_pdf.cfm?pub_id=904990).

limitation and restricted access mechanisms to maximize the protection of the confidential statistical data for the entirety of the data lifecycle. Access to well-trained professional staff are a critical component of Recognized Statistical Agencies' and Units' ability to meet their obligations to maintain confidentiality for respondents and other data providers and participants, and crucial for making sure data are used for exclusively statistical purposes.

**Proposed § 1321.8(a)(6)** requires Recognized Statistical Agencies and Units inform employees, contractors, and other approved agents of the Recognized Statistical Agencies and Units of the legal requirements to protect confidential statistical data and the associated penalties of willfully disclosing confidential statistical data in an identifiable manner. This reinforces the commitment to confidentiality by the Recognized Statistical Agencies and Units. Under CIPSEA 2018, all Recognized Statistical Agencies and Units are subject to the criminal penalty in 44 U.S.C. 3572(f), which provides that any officer, employee, or approved agents of the Recognized Statistical Agency or Unit who willfully discloses confidential statistical data in an identifiable form is subject to fines and penalties, which include being guilty of a class E felony and imprisoned for not more than 5 years, or fined not more than \$250,000, or both. Other statistical laws also include similar criminal provisions for willful disclosure.

**Proposed § 1321.8(b)(1)** requires parent agencies to ensure that the Recognized Statistical Agencies and Units have the sole authority to determine appropriate access to confidential statistical data. Recognized Statistical Agencies and Units often ask individuals and businesses to provide or grant access to information that is private, sensitive, or proprietary. The requirements in this section are designed to protect the trust necessary to facilitate the sharing of sensitive information by ensuring the Recognized Statistical Agencies and Units have the proper authority to protect confidential statistical data.

**Proposed § 1321.8(b)(2)** requires parent agencies to implement Federal Information Technology Acquisition Reform Act (FITARA) authorities in a manner consistent with both FITARA and section 3563 and to exercise their authorities in a manner that enables, supports, and facilitates

the ability of Recognized Statistical Agencies and Units to meet their fundamental responsibilities. The goal of FITARA is to eliminate duplication and waste in IT acquisition for the Federal Government. *Executive Order 13833: Enhancing the Effectiveness of Agency Chief Information Officers*<sup>88</sup> and the associated implementing regulations from the Office of Personnel Management, seek to enhance the effectiveness of agency CIOs to modernize IT systems, execute IT programs more efficiently, reduce cybersecurity risks, and serve the American people well.

These goals are critical to ensuring effective and efficient IT systems across government. Furthermore, these goals, and the authorities granted to agency CIOs under FITARA and associated policies, do not conflict with the goals of the Evidence Act or with the goals of this proposed regulation. Agency CIOs must ensure, however, that the manner in which FITARA authorities are implemented and exercised within agencies is consistent with both FITARA and section 3563 and that they exercise their authorities in a manner that enables, supports, and facilitates the ability of Recognized Statistical Agencies and Units to meet their fundamental responsibilities.

**Proposed § 1321.8(b)(3)** seeks to ensure that parent agencies enable, support, and facilitate the ability of the Recognized Statistical Agency or Unit to meet its obligations with respect to protecting the privacy of information provided by respondents within the larger privacy oversight role performed by the parent agency.

**Proposed § 1321.8(c)** could serve as a substitute for other sections of this regulation pertaining to the authority to protect confidential statistical data. OMB requests comments both on whether this process would meet the requirements under 44 U.S.C. 3563 as well as which sections of this regulation this process might replace.

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<sup>88</sup> Office of Mgmt. & Budget, Exec. Office of the President, *Enhancing the Effectiveness of Agency Chief Information Officers*, 83 FR 23345 (May 18, 2018), available at <https://www.federalregister.gov/documents/2018/05/18/2018-10855/enhancing-the-effectiveness-of-agency-chief-information-officers>.



Protection of confidential statistical data from unauthorized access and use is an essential authority that Recognized Statistical Agencies and Units must have in order to carry out their fundamental responsibilities. CIPSEA 2018 obligates every Recognized Statistical Agency or Unit to carry out the responsibility to “protect the trust of information providers by ensuring the confidentiality and exclusive statistical use” of confidential statistical data. CIPSEA 2018 also applies penalties for willful unauthorized disclosure of any confidential statistical data in 44 U.S.C. 3572. It is inherent in the responsibility to ensure confidentiality that the Recognized Statistical Agency or Unit use the Congressionally established fines and penalties to protect confidential statistical data and it is inherent in the requirement for parent agencies to enable, support, and facilitate Recognized Statistical Agencies and Units that parent agencies support and enable the use of these fines and penalties.

Authority to determine which individuals are permitted to access confidential statistical data must rest with the head of the Recognized Statistical Agency or Unit so that statutory penalties apply to unauthorized disclosure of identifiable information. To exercise such authority outside of the Recognized Statistical Agency or Unit creates an unintended and harmful loophole to the penalty established in 44 U.S.C. 3572. This regulation would require that the entire agency recognize and uphold the Recognized Statistical Agency or Unit’s exclusive authority to determine who has access to confidential statistical data. Importantly, Recognized Statistical Agencies and Units may have agency-specific statistical laws that provide penalties and those agencies should ensure that all appropriate legal penalties apply to unauthorized disclosure of confidential statistical data.

Additionally, exclusive authority sitting with the Recognized Statistical Agency or Unit to determine access underlies the commitment made to confidential statistical data providers that the data be used for exclusively statistical purposes. Recognized Statistical Agencies and Units have the necessary expertise to determine what constitutes statistical purposes and Recognized Statistical Agencies and Units are statutorily obligated to keep the commitment. To exercise such

authority outside of the Recognized Statistical Agency or Unit could undermine data providers' confidence in the Recognized Statistical Agency or Unit's capacity to keep their commitments.

Several sections of this regulation would protect confidential statistical data from unauthorized access by ensuring Recognized Statistical Agencies and Units have the sole authority to make determinations about access to confidential statistical data. For example, § 1321.7(a)(4) provides Recognized Statistical Agencies and Units with exclusive authority for granting access to confidential statistical data, § 1321.7(b)(5) ensures Recognized Statistical Agencies and Units have the appropriate authority regarding access to confidential statistical data, § 1321.8(a)(1) requires Recognized Statistical Agencies and Units to restrict access to confidential statistical data, and § 1321.8(b)(1) requires parent agencies to ensure Recognized Statistical Agencies and Units have sole authority to provide access to confidential statistical data by delegating any other authority to the Recognized Statistical Agency or Unit.

Paragraph (c) provides a more detailed process to achieve the same goal. Some Recognized Statistical Agencies or Units have sufficient resources to maintain their own IT staff, equipment, and software. In those cases, it is likely unnecessary for parent agency officials to access confidential statistical data and a parent agency would not need to do anything other than to ensure that those resources are maintained and ensure that parent agency employees who are not designated as agents understand they are not permitted to access confidential statistical data. However, some Recognized Statistical Agencies and Units have a greater reliance on their parent agencies' IT infrastructure. In those cases where Recognized Statistical Agencies and Units meet their obligations through reliance on parent agency officials managing one or more aspects of IT security and such officials need to access confidential statistical data for the limited purposes of protecting that data from unauthorized access or otherwise providing support services for statistical activities, this proposed section lays out a process wherein the Recognized Statistical Agency or Unit maintains authority to determine the standards for accessing the data and authority to designate for who can access the data. The process also provides transparency

regarding the standards for access and requires a coordinated effort between the Recognized Statistical Agency or Unit and the parent agency to ensure that the parent agency has the access it needs to meet its responsibilities.

Paragraph (c) makes it clear the responsibility to ensure that the data is protected from unauthorized access stretches across the entire agency—including the responsibility to protect the data from unauthorized access within the agency itself. The regulation would not alter any other requirements for any agency officials to ensure that data is protected from unauthorized access. Instead, it would simply clarify that, given the sensitive nature of confidential statistical data and the obligation to protect against disclosure and nonstatistical use, the data receives an extra layer of security by requiring any person outside of the Recognized Statistical Agency or Unit to be designated by the Recognized Statistical Agency or Unit as an agent of the Recognized Statistical Agency or Unit should they require access to confidential statistical data. This designation of agents and limitation on access to anyone who is not an employee or agent of the Recognized Statistical Agency or Unit is necessary so that everyone accessing the confidential statistical data is subject to the same penalty for unauthorized disclosure, which is another layer of security against misuse of the data. A requirement to be authorized to access confidential data is not unique to confidential statistical data. However, this process also ensures that if there are disagreements or challenges the head of the agency and the Chief Statistician of the United States are available and involved in resolving the conflict.

#### **Proposed § 1321.9 – Compliance Review**

This regulation seeks to ensure the efficiency and effectiveness of Recognized Statistical Agencies and Units, as well as the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes. History has shown that the ability of Federal agencies to meet the requirements and responsibilities described in the previous sections will depend on the creation of institutional processes that result in meaningful incentives for compliance.

This proposal offers three options to address the need for a compliance review:

(A) ICSP Review: Option A would direct the ICSP to form a Peer Review Committee, which will assess each Recognized Statistical Agency or Unit and its parent agency for compliance with this regulation.

(B) Council of the Inspectors General on Integrity and Efficiency (CIGIE) Review: Option B would direct the Council for Inspector General Integrity and Efficiency to form a statistical audit committee, which would designate certain Inspectors General as statistical auditors and provide those statistical auditors with support, education, and resources. Each Recognized Statistical Agency or Unit and its parent agency would be audited for compliance with this regulation.

(C) Inspector General Review: Option C would direct each Inspector General of each parent agency containing a Recognized Statistical Agency or Unit to conduct audits for compliance with this regulation.

Under any option, each Recognized Statistical Agency or Unit and parent agencies would be reviewed at least once every three years, which is consistent with the Paperwork Reduction Act's requirement for a review of information collections every three years. Each of these three options includes requirements for transparency of the results of the audits and tracking progress on addressing any identified deficiencies. These options also each recognize the role of the Chief Statistician of the United States in coordinating and overseeing the Federal Statistical System and ensuring compliance with statistical laws. None of the three options would authorize access to confidential statistical data or related information systems unless such access was in compliance with this regulation and any other applicable statutes.

***Option A*** would direct the Interagency Council on Statistical Policy to form a Peer Review Committee (hereafter, "the Committee") under the Council's role in advising and assisting the Director of OMB in carrying out the Director's statistical policy and coordination

responsibilities, as described in section 3504(e) and carried out by the Chief Statistician of the United States. The Committee, in consultation with the Chief Statistician of the United States, is required to develop and govern procedures to perform peer- and/or self-assessments of each Recognized Statistical Agency or Unit and relevant associated parent agencies, at least once every three years for compliance with the regulations proposed here, and to make those assessments available to the public on the website of the Recognized Statistical Agency or Unit in a timely manner. This does not negate the ability of the Chief Statistician of the United States or any other oversight body to lead or conduct other additional internal or external oversight activities, as appropriate.

These proposed procedures are based on domestic and international best practices and are consistent with requirements and best practices from the National Academies, at the United Nations, within Eurostat, and for the United Kingdom, Canada, and Mexico. For example, the National Academies notes that Recognized Statistical Agencies and Units “should have processes in place to support regular evaluations of their major statistical programs and their overall portfolio of programs. Such evaluations should include internal reviews by staff and external reviews by independent groups.”<sup>89</sup> The United Nations’ Fundamental Principles of Official Statistics implementation guidance<sup>90</sup> recommends that systematic quality assessments be performed, such as self-assessments, peer reviews, or quality audits, or combinations thereof. The Expert Group on National Quality Assurance Framework, which was commissioned by the United Nations Statistical Commission (UNSC), defines quality audits as a “systematic, independent, and documented process” that seeks to obtain evidence about the quality of statistical processes and to assess it objectively. The quality audits seek to understand the extent to which “policies, procedures, and requirements on quality are fulfilled.” UNSC defines peer

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<sup>89</sup> Nat’l Acad. Sci., Eng’g, & Med., *Principles and Practices for a Federal Statistical Agency* (7th ed. 2021), available at <https://www.nap.edu/read/25885/>.

<sup>90</sup> United Nations Statistics Division, *Supplementing the United Nations Fundamental Principles of Official Statistics: Implementation Guidelines* (2019), available at <https://unstats.un.org/unsd/statcom/50th-session/documents/BG-Item3b-FPOS-Implementation-guidelines-E.pdf>.

reviews as external audits aimed to “assess a statistical process at a higher level” but not to check item by item requirement conformity.<sup>91</sup>

The advantage of peer reviews over self-assessments is the use of external experts. Compared to formal quality audits, peer reviews may be less formal and broader while still meeting the goal of examining a Recognized Statistical Agency’s or Unit’s practices for compliance with the Federal Statistical System’s standards and practices.

The European Statistical System in particular has a long, well-documented, and very transparent history of using peer reviews of national statistics institutes. The objective of their peer reviews is to “review the compliance/alignment of the [European Statistical System] with the Code of Practice and to help the statistical authorities making up the [European Statistical System] to further improve and develop the national statistical systems.”<sup>92</sup>

To provide for transparency around the results of the assessments, the Committee shall require publication of the results of the review on the Recognized Statistical Agency’s or Unit’s public website in a timely manner. The Committee should consider whether all Recognized Statistical Agencies and Units should place the results of the reviews in a standardized location on the public websites and should determine how many business days after results are available to the Recognized Statistical Agency or Unit that they are required to be posted on their public website. Requiring transparency of the results is not unique to the U.S.; the United Nations’ Fundamental Principles of Official Statistics Implementation Guide states that it is essential to the trust and credibility of official statistics that “any evaluation reports and audits of statistical activities should be made public.”<sup>93</sup>

**Options B and C** would require each agency that contains a Recognized Statistical Agency or Unit to undergo an audit of compliance with these regulations by an Inspector General. Since

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<sup>91</sup> United Nations Statistical Commission, *Guidelines For The Template For A Generic National Quality Assurance Framework* (2012), available at <https://unstats.un.org/unsd/dnss/docs-nqaf/GUIDELINES%208%20Feb%202012.pdf>.

<sup>92</sup> European Statistics System, Peer Reviews, available at <https://ec.europa.eu/eurostat/web/quality/peer-reviews>.

<sup>93</sup> Friends of the Chair Group on the Implementation of the Fundamental Principles of Official Statistics, U.N. Stat. Comm’n, *United Nations Fundamental Principles of Official Statistics: Implementation Guidelines* 66 (2015), available at [https://unstats.un.org/unsd/dnss/gp/Implementation\\_Guidelines\\_FINAL\\_without\\_edit.pdf](https://unstats.un.org/unsd/dnss/gp/Implementation_Guidelines_FINAL_without_edit.pdf).

1978, Inspectors General have been conducting audits of agencies to promote efficiency and effectiveness of Federal programs. They are uniquely situated to provide an objective and independent review of agency operations.

Given the unique nature of statistical laws and processes, both options would require Inspectors General to consult with the Chief Statistician of the United States to ensure consistent interpretation and application of statistical laws and to promote a better understanding of statistical processes. Option B would further consistency and statistical expertise among Inspectors General by requiring the establishment of a committee that would designate certain Inspectors General as statistical auditors. This option would benefit the Federal Statistical System and the Inspectors General community by reducing the number of Inspectors General that need to develop the specialized expertise in statistical laws and practices and reducing the number of additional persons who may need to seek authorization to access confidential statistical data and related information systems.

Under both options (B) and (C), the head of the Recognized Statistical Agency or Unit shall be considered a responsible official for purposes of the statistical audit and shall be given an opportunity to review and respond to the audit results.

#### **F. Expected Impact of This Regulation**

This proposed regulation applies to Federal agencies, and does not impose requirements on individuals, businesses, associations, organizations, or other private sector entities. The purpose of this proposed regulation is largely to conform existing regulations, policies, and practices to the new statutory requirements in the Evidence Act, in particular for Recognized Statistical Agencies and Units to meet fundamental responsibilities and for parent agencies to enable, support, and facilitate the Recognized Statistical Agencies and Units in meeting their fundamental responsibilities. These proposed regulations fill in some policy gaps, but any regulatory decisions will have a marginal impact on transfers, costs, and benefits, and this proposed regulation goes no further than is necessary to implement the statutory requirements of

the Evidence Act. Without this proposed regulation, it will be impossible for OMB to comply with its obligations under the Evidence Act to promulgate regulations implementing these new statutory provisions, and agencies will lack guidance concerning how to effectuate their own obligations under the Evidence Act.

### *Affected Agencies and Current Landscape*

This proposed regulation affects the Recognized Statistical Agencies and Units, as well as parent agencies, as defined in this proposed regulation.

\* *Recognized Statistical Agencies and Units*: As of this proposed regulation, there are 16 Recognized Statistical Agencies and Units which vary in size from around 50 full time employees to around 7,000 full time employees.<sup>94</sup> Recognized Statistical Agencies and Units also vary in position within their organizational units and reporting structure.

\* *Parent agencies*: Parent agencies vary widely in size and organizational structure.<sup>95</sup> Because there is no authoritative source on the number of Federal agencies, for the purposes of this proposed regulation, OMB is counting the number of Federal agencies in the following way:

- 24 CFO Act agencies
- 36 other or independent agencies, taking the total number of agencies in the Unified Agenda (60)<sup>96</sup> and subtracting out the 24 CFO Act agencies

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<sup>94</sup> Office of Mgmt. & Budget, Exec Office of the President, Statistical Programs of the United States Government: Fiscal Years 2019/2020 (2020), *available at* <https://www.whitehouse.gov/wp-content/uploads/2020/12/statistical-programs-20192020.pdf>.

<sup>95</sup> For example, the Department of Education has approximately 3,900 full time employees and the Department of Veterans Affairs has approximately 342,000 full time employees. Also, there are parent agencies that are smaller than the Department of Education. See Office of Personnel Mgmt, Sizing Up the Executive Branch Fiscal Year 2017, *available at* <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/reports-publications/sizing-up-the-executive-branch-2016.pdf>.

<sup>96</sup> Office of Info. & Reg. Affairs, Exec Office of the President, *About the Unified Agenda* [https://www.reginfo.gov/public/jsp/eAgenda/UA\\_About.myjsp](https://www.reginfo.gov/public/jsp/eAgenda/UA_About.myjsp) (last visited May 1, 2023).



- 240 components of CFO Act agencies using an average of 10 components per CFO Act agency (inclusive of the 16 Recognized Statistical Agencies and Units)

Thus, for the purposes of this proposed regulation, there are 300 parent agencies. Note that Recognized Statistical Agencies and Units can be considered parent agencies to other Recognized Statistical Agencies and Units under this proposed regulation.

OMB expects that Recognized Statistical Agencies and Units are generally already implementing most requirements of this proposed regulation. However, OMB expects that the current landscape across parent agencies varies widely. OMB expects that for some parent agencies implementation of this proposed regulation will be resource intensive; however, OMB also expects that some parent agencies already have regulations, policies, and practices that align with a substantial number of the requirements for this proposed regulation. Also, for many parent agencies, implementation of this proposed regulation will not be resource intensive and will be complete after reviewing this proposed regulation—as many parent agencies are expected to not have any regulations, policies, or practices that intersect with this proposed regulation. Given the current landscape, OMB is uncertain the exact number of Federal regulations, policies, and practices that will require revision based on this proposed regulation.

#### *Estimated Cost of Agencies Reviewing This Regulation*

This proposed regulation will require Federal agencies to first review this regulation. This step includes reading of the full regulation and taking brief notes on possible intersections with parent agency regulations, policies, and practices. It is likely that this review will be performed by GS-14 Step 5 or equivalent staff within the Federal agencies, as this review will require a deep understanding of the parent agency's regulations, policies, and practices to understand for

which and how the parent agency's regulations, policies, and practices intersect with this proposed regulation to inform the next steps of reviewing and making revisions to those regulations, policies, and practices. It is also likely that the staff will be based in the Washington, D.C., pay region, as many of the staff are likely to work for the Federal agency headquarters locations. The hourly rate for a GS-14 Step 5 employee in the Washington, D.C., region per the Office of Personnel Management for calendar year 2023 is \$71.88. OMB assumes that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in a value of \$143.76 per hour.

OMB expects that for the 24 CFO Act agencies that a central office would do the first review for all components, except Recognized Statistical Agencies and Units, to identify which parts of the regulation would apply to the different components. OMB expects this to be resource intensive for the central office, but OMB expects review of the regulation by components will be less intensive because of the work done by the central office to target the components review. OMB expects other agencies, independent agencies, and Recognized Statistical Agencies and Units to do this review for their own agency.

Because of this tiered review process, review of this regulation is expected to take different lengths of time for the different parent agencies. In general, OMB expects it will take the central office for the 24 CFO Act agencies on average 40 hours to do this review and identify relevant parts of the regulation for its components. This means it would cost \$5,750.40 per agency and \$138,009.60 across all 24 CFO Act agencies. For the 224 components except the Recognized Statistical Agencies and Units, OMB expects this review to take on average 7 hours. This average for components assumes a longer review duration for parent agencies in the reporting structure and a much shorter review duration for parent agencies not in the reporting structure. This means it would cost \$1,006.32 per agency and \$225,415.68 across all 224 components. For the 36 other agencies and independent agencies, OMB expects this review to take an average of 16 hours. This means it would cost \$2,300.16 per agency and \$82,805.76 across all 36 other

agencies and independent agencies. For the 16 Recognized Statistical Agencies and Units, OMB expects this review to take on average 16 hours. This means it would cost \$2,300.16 per agency and \$36,802.56 across all 16 Recognized Statistical Agencies and Units.

Therefore, across the 300 Federal agencies, the Governmentwide cost for reviewing this regulation would be \$483,033.60.

<b><u>Cost to Review the Regulation</u></b>					
<b>Type</b>	<b>Number of Agencies</b>	<b>Hours to Review</b>	<b>Cost per Hour</b>	<b>Cost per Agency</b>	<b>Total Costs</b>
RSAU	16	16	\$ 143.76	\$2,300.16	\$ 36,802.56
CFO Act Agencies - Central Office	24	40	\$ 143.76	\$5,750.40	\$138,009.60
Components of Departments, except RSAUs	224	7	\$ 143.76	\$1,006.32	\$225,415.68
Other/Independents	36	16	\$ 143.76	\$2,300.16	\$ 82,805.76
Totals	300				\$483,033.60

*Estimated Costs of Agencies Reviewing Their Own Regulations, Policies, and Practices to Determine Necessary Action*

After review of this regulation, parent agencies will then review their own regulations, policies, and practices to determine necessary action. This step may also require engagement across components of the Federal agency, including with staff of any Recognized Statistical Agencies or Units in the organization.

Review of the regulations, policies, and practices will vary across Federal agencies, depending on the number of regulations, policies, and practices issued by the Federal agency. OMB splits Federal agencies into four categories for this analysis:

- (1) 16 Recognized Statistical Agencies and Units,

(2) 32 parent agencies that are in the direct reporting structure for the Recognized Statistical Agency or Unit,<sup>97</sup>

(3) 63 parent agencies that are not in the direct reporting structure for the Recognized Statistical Agency or Unit but are likely to have regulations, policies, or practices that require review,<sup>98</sup> and

(4) 189 parent agencies that are not in the direct reporting structure for the Recognized Statistical Agency or Unit but are not likely to have regulations, policies, or practices that require review.<sup>99</sup>

OMB expects these four categories of Federal agencies will have meaningfully different costs for reviewing their regulations, policies, and practices. For all four categories, OMB is estimating the review time on a per regulation, policy, or practice basis.

For category 1, OMB estimates it will take on average 4 hours for an employee with an average hourly cost of \$143.76 per regulation, policy, or practice to review and determine necessary action. OMB expects 4 hours given their familiarity with and expectation that most are already implementing most of the requirements of this regulation. OMB expects on average that Recognized Statistical Agencies or Units will have 10 regulations, policies, or practices to review. Therefore, for each Recognized Statistical Agency or Unit, OMB estimates it will cost \$5,750.40 to review their regulations, policies, and practices. Across all 16 Recognized Statistical Agencies or Units, OMB estimates it will cost \$92,006.40.

For category 2, OMB estimates it will take on average 16 hours for an employee with an average hourly cost of \$143.76 per regulation, policy, or practice to review and determine necessary action. OMB expects it to take more time for the parent agencies that are in the

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<sup>97</sup> Reporting structures across the Government vary widely. As such, some Recognized Statistical Agencies or Units report directly to their agency's front office, while others report to one or more interim agencies. Assuming for the 16 Recognized Statistical Agencies or Units that on average there are two agencies in the reporting structure, that means 32 parent agencies are included in the direct reporting structure for this estimate.

<sup>98</sup> OMB estimates that 25 percent of the remaining parent agencies will likely have regulations, policies, or practices that require review.

<sup>99</sup> OMB estimates that the remaining 75 percent of parent agencies will likely not have regulations, policies, or practices that require review.

direct reporting structure for the Recognized Statistical Agency or Unit because they are likely to have more intersecting regulations, policies, and practices with this regulation. OMB expects on average that parent agencies in the direct reporting structure for a Recognized Statistical Agency or Unit will have 20 regulations, policies, or practices to review. Therefore, for each parent agency that are in the direct reporting structure for the Recognized Statistical Agency or Unit, OMB estimates it will cost \$46,003.20 to review their regulations, policies, and practices. Across all 32 parent agencies that are in the direct reporting structure for the Recognized Statistical Agency or Unit, OMB estimates it will cost \$1,472,102.40.

For category 3, OMB estimates it will take 8 hours for an employee with an average hourly cost of \$143.76 per regulation, policy, or practice on average to review and determine necessary action. OMB expects it to take less time for these parent agencies than those that are in the direct reporting structure for the Recognized Statistical Agency or Unit, but more time than for the Recognized Statistical Agency or Unit. OMB expects on average that parent agencies that are not in the direct reporting structure for the Recognized Statistical Agency or Unit but are likely to have regulations, policies, or practices that require review will have 10 regulations, policies, or practices to review. Therefore, for each parent agency that are not in the direct reporting structure for the Recognized Statistical Agency or Unit but are likely to have regulations, policies, or practices that require review, OMB estimates it will cost \$11,500.80 to review their regulations, policies, and practices. Across all 63 parent agencies that are not in the direct reporting structure for the Recognized Statistical Agency or Unit but are likely to have regulations, policies, or practices that require review, OMB estimates it will cost \$724,550.40.

For category 4, OMB expects it to be very rare for an agency to need to review their regulations, policies, or practices to determine necessary action. Thus, OMB estimates the time spent on this on average to be zero hours and therefore cost \$0.

<b><u>Costs to Review Agency Regulations, Policies, and Practices</u></b>						
<b>Category</b>	<b>Number of Agencies</b>	<b>Hours to Review</b>	<b>Cost per Hour</b>	<b>Number of Policies to Review</b>	<b>Cost per Agency</b>	<b>Total Cost</b>
1	16	4	\$ 143.76	10	\$ 5,750.40	\$ 92,006.40
2	32	16	\$ 143.76	20	\$ 46,003.20	\$1,472,102.40
3	63	8	\$ 143.76	10	\$ 11,500.80	\$ 724,550.40
4	189	0	\$ 143.76	0	\$ -	\$ -
					<b>Total:</b>	\$2,288,659.20

*Estimated Costs of Agencies Revising Their Own Regulations, Policies, and Practices Where Needed*

Where determined necessary, Federal agencies will need to revise regulations, policies, and practices because of this regulation. OMB expects that revisions will range from relatively small and technical to substantive and resource intensive, which means that the time required to draft the revisions and execute the revisions to issue a final update will vary. Similar to the previous analysis, OMB splits the analysis of the estimated costs based on category of agency. The following provides the analysis for expected costs for the drafting of the revisions to regulations, policies, and practices.

For category 1, OMB estimates it will take on average 40 hours for an employee with an average hourly cost of \$143.76 per regulation, policy, or practice to draft the revisions appropriately. This is because OMB expects that most of the regulations, policies, or practices within the Recognized Statistical Agencies and Units already align with this proposed regulation, and OMB would expect the revisions to be relatively small or technical. OMB expects that up to half of the reviewed regulations, policies, and practices may require revisions. Therefore, OMB expects on average 5 regulations, policies, or practices to be

revised based on this regulation. Per agency, this is expected to be a total cost of \$28,752.00, and across all of this category of agency is expected to be \$460,032.00.

For category 2, OMB estimates it will take on average 80 hours for an employee with an average hourly cost of \$143.76 per regulation, policy, or practice to revise it appropriately.

OMB expects that parent agencies that are in the direct reporting structure for the Recognized Statistical Agency or Unit will have more regulations, policies, and practices that will require more substantive revisions. In addition, OMB expects a higher rate of regulations, policies, and practices to require revision and estimates this at 75 percent of those reviewed.

Therefore, OMB expects on average 15 regulations, policies, or practices to be revised based on this regulation. Per agency, this is expected to be a total cost of \$172,512.00, and across all of this category of agency is expected to be \$5,520,384.00.

For category 3, OMB estimates it will take on average 80 hours for an employee with an average hourly cost of \$143.76 per regulation, policy, or practice to revise it appropriately.

Similar to category 2, OMB expects that when a regulation, policy, or practice requires revision, it will be substantive. However, OMB expects a lower rate of reviewed regulations, policies, and practices to require revision, estimated that about 25 percent may require revisions. Therefore, OMB expects on average 2.5—rounded up to 3—regulations, policies, or practices to be revised based on this regulation. Per agency, this is expected to be a total cost of \$34,502.40, and across all of this category of agency is expected to be \$2,173,651.20.

For category 4, OMB expects it to be very rare for a regulation, policy, or practice to require revision. Therefore, OMB expects on average 0 policies to be revised and \$0 expected cost.

<b><u>Costs to Draft or Revise Regulations</u></b>
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Category	Number of Agencies	Policies to Revise	Hours to Draft Revisions	Cost per Hour	Cost per Agency	Total Cost Across Category
1	16	5	40	\$ 143.76	\$ 28,752.00	\$ 460,032.00
2	32	15	80	\$ 143.76	\$172,512.00	\$ 5,520,384.00
3	139	3	80	\$ 143.76	\$ 34,502.40	\$ 4,795,833.60
4	139	0	0	\$ 143.76	\$ -	\$ -
					<b>Total:</b>	<b>\$ 8,154,067.20</b>

Next, the Federal agencies will need to implement the draft revisions, which includes steps such as gaining approval from the appropriate authorities within the Federal agencies and issuing, if relevant, publicly available updates of the affected regulations, policies, and practices. OMB expects the majority of revisions to be to policies and practices, and for it to be rare that a regulation require revision. Finalizing revised policies and practices require far less procedures than regulations. Thus, OMB on average expects that finalizing the revisions of the regulations, policies, and practices to be 80 hours per regulation, policy, or practice. For this analysis, OMB assumes the same amount of time for all four categories of agencies because procedures to finalize revisions to regulations, policies, and practices should be relatively consistent across Federal agencies. To account for the differing levels of engagement within Federal agencies to approve the final revisions to regulations, policies, and practices, OMB is using an average hourly rate equivalent for a Senior Executive Service Level IV employee based in Washington, D.C., which is \$84.75. OMB assumes that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in a value of \$169.52 per hour. Using the number of regulations, policies, and practices that require revision from the previous analysis, the costs by category of agency are as follows:

For category 1, the costs per agency are expected to be \$67,808.00 and across all of this category of agencies is expected to be \$1,084,928.00.



For category 2, the costs per agency are expected to be \$203,424.00 and across all of this category of agencies is expected to be \$6,509,568.00.

For category 3, the costs per agency are expected to be \$40,684.80 and across all of this category of agencies is expected to be \$2,563,142.40.

For category 4, the costs per agency are expected to be \$0 and across all of this category of agencies is expected to be \$0.

<b><u>Costs to Finalize and Issue Revised Policies</u></b>						
<b>Category</b>	<b>Number of Agencies</b>	<b>Policies to Revise</b>	<b>Hours to Finalize and Issue Revisions</b>	<b>Cost per Hour</b>	<b>Cost per Agency s</b>	<b>Total Cost Across Category</b>
1	16	5	80	\$ 169.52	\$ 67,808.00	\$ 1,084,928.00
2	32	15	80	\$ 169.52	\$203,424.00	\$ 6,509,568.00
3	63	3	80	\$ 169.52	\$ 40,684.80	\$ 2,563,142.40
4	189	0	0	\$ 169.52	\$ -	\$ -
					<b>Total:</b>	<b>\$10,157,638.40</b>

Therefore, across the Federal Government, to review this regulation and review and revise regulations, policies, and practices as needed to meet the requirements of this regulation, the estimated costs total \$21,083,398.40.

#### *Estimated Costs of the Options Proposed for the Compliance Review*

This proposed regulation includes three options under consideration for ensuring compliance with this proposed regulation.

For Option A: ICSP Peer Review Committee, the first step will be to establish a Peer Review Committee. This proposed regulation does not specify the structure of the Committee. To develop estimated costs, OMB is assuming that the Committee would include 8 agencies, half the number of current Recognized Statistical Agencies and Units. For this purpose, OMB is using an average hourly rate equivalent for a Senior Executive Service Level IV employee based

in Washington, D.C., which is \$84.75. OMB assumes that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in a value of \$169.52 per hour. OMB uses this rate because it is likely that members of the Committee will be members of the ICSP, which is made up largely of Senior Executive Service employees. OMB estimates on average that each member would spend about 96 hours per year dedicated to the startup and ongoing work of the Committee. Therefore, OMB estimates that this step will cost \$16,273.92 per agency and \$130,191.36 across the full Committee.

<b><u>Annual Cost for ICSP Peer Review Committee</u></b>				
Number of Agencies (1 Staff per Agency)	Hours per Year Dedicated to Committee Work	Cost per Hour	Annual Cost per Agency to Participate	Total Annual Cost of Full Committee to Participate
8	96	\$ 169.52	\$ 16,273.92	\$ 130,191.36

Then, OMB estimates costs by activity for each of the assessments across the 3-year timeframe. Over the 3-year timeframe, OMB expects all 16 Recognized Statistical Agencies and Units to have an assessment and that on average time spent for each agency on this participation would be 640 hours. OMB expects this participation to be done on average by employees at a GS-14 Step 5 in the Washington, D.C., region, which results in a cost of \$143.76 per hour. This results in an expected average cost per agency of \$92,006.40 and across all agencies of \$1,472,102.40. In addition, OMB expects the 32 parent agencies in the reporting structure for Recognized Statistical Agencies and Units to participate in the assessment. Over the 3-year timeframe, on average OMB expects each to spend 320 hours participating in the assessment. OMB expects this participation to be done on average by employees at a GS-14 Step 5 in the Washington, D.C., region, which results in a cost of \$143.76 per hour. This results in an expected average cost per agency of \$46,003.20 and across all agencies \$1,472,102.40. Then,

OMB expects all 16 Recognized Statistical Agencies and Units to publish a summary of findings on their website and estimates on average that publication to take 2 hours of time by an employee with a cost of \$143.76 per hour. This results in expected costs of \$286.52 per agency and \$4,600.32 across all agencies. For the next two activities, OMB is using an average hourly rate equivalent for a Senior Executive Service Level IV employee based in Washington, D.C., which is \$84.75. OMB assumes that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in a value of \$169.52 per hour. For the Chief Statistician Engagement activity, it is expected that all 16 Recognized Statistical Agencies and Units will need to participate and that on average each agency's engagement would require 8 hours of the time of the head of the Recognized Statistical Agency or Unit and 8 hours of time of the Chief Statistician of the United States for a total of 16 hours per agency. This engagement would only occur once per agency over the 3-year timeframe, and would cost \$2,712.32 per agency and \$43,397.12 across all agencies. Finally, the Committee will be required to do some additional work to govern the assessments in addition to their time doing Committee activities. OMB estimates on average that each of the 8 Committee agencies would spend 4 hours per month governing assessments, which results in a total of 144 hours across the 3-year timeframe. This results in an estimated cost of \$24,410.88 per agency and \$195,287.04 across the Committee agencies.

<b><u>Cost of ICSP Peer Review Committee Assessments of RSAU &amp; Parent Agencies over 3-year Cycle</u></b>					
<b>Activity</b>	<b>Number of Agencies</b>	<b>Hours per Agency Across 3 Years</b>	<b>Cost of per Hour</b>	<b>Cost per Agency to Participate</b>	<b>Total Cost Across all Agencies</b>
RSAU Participation in Assessment	16	640	\$ 143.76	\$ 92,006.40	\$ 1,472,102.40
Parent Agencies in Reporting Structure Participation in Assessment	32	320	\$ 143.76	\$ 46,003.20	\$ 1,472,102.40
Publish Summary of Findings	16	2	\$ 143.76	\$ 287.52	\$ 4,600.32

Chief Statistician Engagement in Deficiencies	16	16	\$ 169.52	\$ 2,712.32	\$ 43,397.12
Committee Engagement to Govern Assessments	8	144	\$ 169.52	\$ 24,410.88	\$ 195,287.04

For Option B: Statistical Auditors Review, OMB estimates similar steps and estimates of time and costs as Option A. OMB similarly does not describe the structure of such a committee, and assumes 8 agencies would be on the committee for this purpose. OMB uses the higher employee cost of \$169.52 for the committee time as well.

<b><u>Annual Cost for CIGIE Statistical Audit Committee</u></b>				
Number of Agencies (1 Staff per Agency)	Hours per Year Dedicated to Committee Work	Cost per Hour	Annual Cost per Agency to Participate	Total Annual Cost of Full Committee to Participate
8	96	\$ 169.52	\$ 16,273.92	\$ 130,191.36

Similarly, OMB breaks down this option by activity steps to determine estimated costs. OMB expects participation in the assessment, publishing a summary of findings, and Chief Statistician engagement to be the same estimated costs as Option A. OMB also estimates the additional time the CIGIE statistical auditors spend governing the assessments would be similar to the Option A estimates for the committee. The table below provides more details:

<b><u>Cost of CIGIE Committee Statistical Audits of RSAU &amp; Parent Agencies over 3-year Cycle</u></b>					
Activity	Number of Agencies	Hours per Agency Across 3 Years	Cost per Hour	Total Cost per Agency to Participate	Total Cost of Across all Agencies
RSAU Participation in Assessment	16	640	\$ 143.76	\$ 92,006.40	\$1,472,102.40
Parent Agencies in Reporting Structure Participation in Assessment	32	320	\$ 143.76	\$ 46,003.20	\$1,472,102.40
Publish Summary of Findings	16	2	\$ 143.76	\$ 287.52	\$ 4,600.32

Chief Statistician Engagement in Deficiencies	16	16	\$ 169.52	\$ 2,712.32	\$ 43,397.12
CIGIE Statistical Auditors Committee Engagement in Addition to Committee Work	8	144	\$ 169.52	\$ 24,410.88	\$195,287.04

For Option C: Inspectors General Review, OMB does not expect a committee to be formed, so there would be no associated costs. This is in contrast to both Options A and B. OMB does expect most of the activities to remain as similar time and cost estimates to Options A and B. The difference from Options A and B is in the last activity. Instead of the Committee (Option A) or the CIGIE Statistical Auditors (Option B) having additional work to govern the assessments, OMB expects inspectors general (IGs) to incur time and costs engaging for these assessments. OMB estimates that over the 3-year timeframe all 16 separate assessments will need to occur and for each IGs will spend on average 216 hours across the 3 years. Thus, OMB expects for this activity the cost per agency to be \$36,616.32 and across all agencies to be \$585,861.12.

Activity	Number of Agencies	Hours per Agency Across 3 Years	Cost per Hour	Total Cost per Agency to Participate	Total Cost of Across all Agencies
RSAU Participation in Assessment	16	640	\$143.76	\$92,006.40	\$1,472,102.40
Parent Agencies in Reporting Structure Participation in Assessment	32	320	\$143.76	\$46,003.20	\$1,472,102.40
Publish Summary of Findings	16	2	\$143.76	\$ 287.52	\$ 4,600.32
Chief Statistician Engagement in Deficiencies	16	16	\$169.52	\$ 2,712.32	\$ 43,397.12
IG Engagement	16	216	\$169.52	\$36,616.32	\$ 585,861.12

In sum, OMB expects Options A and B to have similar estimated costs to the Government at \$3,317,680.64. OMB expects Option C to cost \$3,578,063.36.

### *Regulatory Alternatives*

For the most part, the changes reflected in OMB's proposed implementing regulations are required by statute and cannot be avoided or further simplified. Some regulatory alternatives include:

(1) Handling compliance review. OMB details three options for proposed compliance review requirements. Each of these options leverages different expertise and has different costs.

Another option is to completely remove this compliance review from the regulation. Having the ICSP Peer Review Committee perform the compliance review provides for those most familiar with statistical laws to assess the compliance with this statistical regulation. However, this may influence the results of the assessments to lean more on whether parent agencies are in compliance than whether Recognized Statistical Agencies or Units are in compliance.

Having a group of CIGIE statistical auditors do this assessment for compliance removes either set of agencies subject to this regulation from being part of the assessment. There is risk, however, at least in the early years after the effective date of this regulation, that these CIGIE statistical auditors may not be familiar enough with statistical laws to perform the assessments with a high degree of accuracy. This risk decreases over time as this group of auditors becomes more familiar with the statistical laws and develops standard assessment procedures. Having the IGs do this assessment for compliance also removes the possibility that an agency subject to this regulation could be part of the assessment. However, this approach does not provide a mechanism for IGs to develop a standard assessment practice over time and means the risk of IGs not being familiar enough with statistical laws remains a risk over time as well. Removing the compliance review aspect of this regulation would reduce the costs of this regulation; however, this would also remove the ability of the Chief Statistician of the United States to

assess governmentwide implementation of this regulation. It would also remove the ability of the public to see where Recognized Statistical Agencies and Units are complying with this regulation and where improvements are needed. This poses a risk to the trust of the public in the work of the Recognized Statistical Agencies and Units, which undermines the intent of this regulation.

(2) Changing timeline for agencies to revise regulations, policies, and practices. Currently, this regulation proposes for these revisions to occur within 1 year of the effective date of this regulation. However, this timeline could be extended to 2 years, which would decrease the annual costs detailed in the prior section and spread those costs over 2 years instead of 1. An extended timeline would further exacerbate the timeline to realize the full potential of the Evidence Act, and risk the public's trust in the work of the Federal Statistical System. Speeding up the timeline would likely be infeasible given the resources required to implement the regulation's requirements.

(3) Preventing unauthorized disclosure of confidential statistical data. The proposed regulation offers specific provisions to prevent unauthorized disclosure of confidential statistical data, but offers a broader alternative approach that provides for overarching authority and responsibility for the Recognized Statistical Agency or Unit for all access to confidential statistical data. Each approach meets the requirements of the Evidence Act.

### *Benefits*

These proposed regulations promote trust in the work of Recognized Statistical Agencies and Units, which ultimately promotes trust in the data used by policymakers to inform their decisions. Any loss of trust in the accuracy, objectivity, or integrity of the Federal Statistical System and its statistical products has the potential to cause uncertainty about the validity of measures the Nation uses to monitor and assess its performance, progress, and needs, as well as undermine the public's confidence in the information released by the Government. In addition,

these proposed regulations provide transparency and clarity to parent agencies and the public alike about how best a parent agency can enable, support, and facilitate the work of Recognized Statistical Agencies and Units.

The compliance review is a tool to ensure Recognized Statistical Agencies and Units and parent agencies are accountable to the provisions of this proposed regulation. This means that the compliance review enhances the benefits of the rest of the regulation. Each option offers a different approach, but the resulting benefits of each should be the same.

OMB seeks public comment on additional benefits of these proposed regulations.

## **G. Regulatory Procedures**

### **Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is a significant regulatory action under E.O. 12866.

### **Public Law 104-4, “Unfunded Mandates Reform Act” (2 U.S.C. 1501–1571)**

This proposed rule is not subject to the Unfunded Mandates Reform Act because it does not contain a Federal mandate that may result in the expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector, of \$100M or more in any one year.

### **Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. 601–612)**

The Director of the Office of Management and Budget has certified that this proposed rule is not subject to the Regulatory Flexibility Act because it does not have a significant economic impact on a substantial number of small entities. The proposed rule implements the fundamental responsibilities for statistical agencies and units and requires other Federal agencies to support,



enable, and facilitate statistical agencies and units in meeting their fundamental responsibilities. Thus, the proposed rule would have no direct effect on non-governmental entities, including small businesses.

#### **Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. 3501–3520)**

This proposed rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (PRA). However, if in accordance with any of the requirements proposed in this rule an agency were to determine a need to implement a reporting or recordkeeping requirement subject to the PRA, the agency should, on their own accord, comply with the requirements of the PRA.

#### **Executive Order 13132, “Federalism”**

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. This proposed rule will not have a substantial effect on state and local governments, or otherwise have federalism implications.

#### **List of Subjects in 5 CFR Part 1321**

Statistics.

For the reasons stated in the preamble, the Office of Management and Budget proposes to amend 5 CFR chapter III, subchapter B by adding part 1321 to read as follows:

#### **PART 1321--RESPONSIBILITIES OF RECOGNIZED STATISTICAL AGENCIES AND UNITS**

Sec.

- 1321.1 Purpose.
- 1321.2 Definitions.
- 1321.3 General provisions.
- 1321.4 The four fundamental responsibilities.
- 1321.5 Relevance and timeliness.
- 1321.6 Credibility and accuracy.
- 1321.7 Objectivity.
- 1321.8 Confidentiality.

1321.9 Compliance review.

Authority: 44 U.S.C. 3563.

### **§ 1321.1 Purpose.**

This part is issued under the authority of the Budget and Accounting Procedures Act of 1950,<sup>1</sup> the Paperwork Reduction Act of 1995,<sup>2</sup> the Information Quality Act,<sup>3</sup> and title III of the Foundations for Evidence-Based Policymaking Act, also known as the Confidential Information Protection and Statistical Efficiency Act of 2018 (CIPSEA 2018).<sup>4</sup> The Office of Management and Budget (OMB), in its role as coordinator of the Federal Statistical System under the Paperwork Reduction Act, is required to ensure the efficiency and effectiveness of the system, as well as the integrity, objectivity, impartiality, utility, and confidentiality of information collected and/or used for statistical purposes. This part is issued to meet the requirements under 44 U.S.C. 3563(c) and to strengthen and support the quality of Federal statistical information.

### **§ 1321.2 Definitions.**

For purposes of implementing 5 U.S.C. 314 and all of title III of the Evidence Act the following terms, as used in this part, are defined as follows:

(a) The term *accurate*, when used with respect to statistical activities, means statistics are correct and consistently match the events and trends being measured.

(b) The term *agency* means any entity that falls within the definition of the term *executive agency*, as defined in 31 U.S.C. 102, or *agency*, as defined in 44 U.S.C. 3502.

(c) The term *confidentiality* means a quality or condition accorded to information as an obligation not to disclose that information to an unauthorized party.

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<sup>1</sup> 31 U.S.C. 1104(d).

<sup>2</sup> 44 U.S.C. 3504.

<sup>3</sup> Information Quality Act, Treasury and General Government Appropriations Act for Fiscal Year 2001, sec. 515, Pub. L. 106-554, 114 Stat. 2763A-154 (2000).

<sup>4</sup> 44 U.S.C. 3561-3583.

(d) The term *confidential statistical data* means any information that is acquired for exclusively statistical purposes and under an obligation not to disclose the information to an unauthorized party.

(e) The term *data users* denotes individuals or groups of individuals who use Federal statistical information.

(f) The term *dissemination* means the government-initiated distribution of information to a nongovernment entity, including the public. The term *dissemination*, does not include distribution limited to Federal Government employees, intra-agency or interagency use or sharing of Federal information, or responses to requests for agency records under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (5 U.S.C. 552a).

(g) The term *equitable access* means that statistical products are disseminated in a manner that does not privilege any one person or group over another, with exceptions only as provided in other statutes, or regulations, or Office of Management and Budget promulgated policies or guidance promulgated by the Office of Management and Budget.

(h) The term *fundamental responsibilities* means the responsibilities of Recognized Statistical Agencies and Units listed in 44 U.S.C. 3563(a)(1).

(i) The term *identifiable form* means any representation of information that permits the identity of the individual or entity to whom the information applies to be reasonably inferred by either direct or indirect means.

(j) The term *information provider* denotes members of the public; other agencies of the Federal Government; and organizations outside of the Federal Government, such as State, territorial, Tribal, and local governments, businesses, and other organizations or entities, that provide information to a Recognized Statistical Agency or Unit.

(k) The term *information* means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that an agency disseminates

from a webpage, but does not include the provision of hyperlinks to information that others disseminate. This definition does not include opinions, where the agency's presentation makes it clear that what is being offered is someone's opinion rather than fact or the agency's views.

(l) The term *information system* means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information;

(m) The term *integrity*, when used with respect to statistical information, refers to the quality of information that is protected against improper modification or destruction, and includes ensuring information nonrepudiation and authenticity.

(n) The term *nonstatistical purpose*:

(1) Means the use of data in identifiable form for any purpose that is not a statistical purpose, including any administrative, regulatory, law enforcement, adjudicatory, or other purpose that affects the rights, privileges, or benefits of a particular identifiable respondent; and

(2) Includes the disclosure under 5 U.S.C. 552 of data that are acquired for exclusively statistical purposes under an obligation of confidentiality.

(o) The term *objective*, when used with respect to statistical activities, means accurate, clear, complete, and unbiased.

(p) The term *parent agency* means each agency and every organizational level within the agency, including sub-agencies, offices, components, or units within the agency, as well as the highest organizational level of such agency and excluding the Recognized Statistical Agency or Unit in any agency with more than one Recognized Statistical Agency or Unit, each Recognized Statistical Agency or Unit is considered a parent agency to any other Recognized Statistical Agency or Unit. This term is meant to apply to the full organizational structure.

(q) The term *Recognized Statistical Agency or Unit* (also referred to as statistical agency or unit) means an agency or organizational unit of the executive branch whose activities are predominantly the creation or collection, processing, dissemination, use, storage, and disposition

of data for statistical purposes, as designated by the Director of the Office of Management and Budget under 44 U.S.C. 3562.

(r) The term *reference date* is the time period to which data refer.

(s) The term *relevant*, when used with respect to statistical information, means processes, activities, and other such matters likely to be useful to policymakers and public and private sector data users.

(t) The term *respondent* means a person who, or organization that, is requested or required to supply information to an agency, is the subject of information requested or required to be supplied to an agency, or provides that information to an agency.

(u) The term *statistical activities*:

(1) Means the collection, compilation, processing, or analysis of data for the purpose of describing or making estimates concerning the whole, or relevant groups or components within the economy, society, or the natural environment, and

(2) Includes the development of methods or resources that support those activities, such as measurement methods, models, statistical classifications, or sampling frames.

(v) The term *statistical information* means information produced from statistical activities.

(w) The term *statistical laws* means 44 U.S.C. chapter 35, subchapter III, and other laws pertaining to the protection of information collected for statistical purposes as designated by the Director of the Office of Management and Budget.

(x) The term *statistical press release* is an announcement to media of a statistical product release that contains the title, subject matter, release date, and Internet address of, and other available information about the statistical product, as well as the name of the statistical agency issuing the product, and may include any executive summary information or key findings section as shown in the statistical product. A statistical press release must provide a policy neutral description of the data and may not include policy pronouncements.

(y) The term *statistical products* refers to information dissemination products that are published or otherwise made available for public use that describe, estimate, forecast, or analyze the characteristics of groups, customarily without identifying the persons, organizations, or individual data observations that comprise such groups. Statistical products include general-purpose tabulations, analyses, projections, forecasts, or other statistical reports. Statistical products include products of any form, including both printed and electronic forms.

(z) The term *statistical purpose*:

(1) Means the description, estimation, or analysis of the characteristics of groups, without identifying the individuals or organizations that comprise such groups, and

(2) Includes the development, implementation, or maintenance of methods, technical or administrative procedures, or information resources that support the purposes described in paragraph (z)(1) of this section.

(aa) The term *support function* means a core function of an agency that supports the programmatic functions in achieving the agency's mission, including legal, human resources, communications, legislative affairs, budget, information technology (IT), or procurement functions.

(bb) The term *timeliness* or *timely* refers to the dissemination of statistical products and information at their scheduled release time, or in instances where there is no scheduled release time, the dissemination of statistical products or information as close to the event being measured as possible.

(cc) The term *transparent* means characterized by providing as much information about the quality of and methods used to produce statistical products as practicable without compromising confidentiality.

### **§ 1321.3 General provisions.**

(a) This part should be read as complimentary to existing OMB guidance or Statistical Policy Directives to the extent they are consistent. This part supersedes any Statistical Policy Directives in effect [EFFECTIVE DATE OF FINAL RULE], to the extent that they conflict.

(b) Responsibilities assigned to the Recognized Statistical Agencies and Units under this part are ultimately the responsibility of the head of the Recognized Statistical Agency or Unit, or their designee, unless otherwise specified.

(c) Responsibilities assigned to a parent agency under this part are ultimately the responsibility of the head of the agency, or their designee, unless otherwise specified.

(d) To the extent that a parent agency or Recognized Statistical Agency or Unit determines that it is either appropriate or necessary to deviate from a standard parent agency-level process to ensure compliance with this part, the parent agency and the Recognized Statistical Agency or Unit shall discuss and determine the appropriateness of how to address such deviation, including determining where responsibility lies for compliance with other applicable laws and regulations.

#### **§ 1321.4 The four fundamental responsibilities.**

(a) Recognized Statistical Agencies and Units are charged with the four fundamental responsibilities. Parent agencies are directed to enable, support, and facilitate Recognized Statistical Agencies and Units in carrying out the four fundamental responsibilities.

(b) Each Recognized Statistical Agency or Unit shall maintain a website clearly branded with the name of the Recognized Statistical Agency or Unit to provide information to information providers, data users, and the general public.

(1) The head of each parent agency shall ensure its Recognized Statistical Agency or Unit has:

(i) Sufficient resources to develop and maintain its website;

(ii) The necessary authority and autonomy to determine the content, functionality, appearance, and layout of its website; and

(iii) The capacity to directly update the content, functionality, appearance, and layout of the website without reliance on any parent agency official unless the official is directly assigned to the Recognized Statistical Agency or Unit.

(2) Each Recognized Statistical Agency or Unit shall make available to the public on the website required under this paragraph (b):

(i) A mission statement that clearly describes the purpose of the Recognized Statistical Agency's or Unit's statistical programs and their commitment to each of the four fundamental responsibilities;

(ii) A strategic plan that is consistent with the requirements in 5 U.S.C. 306, which:

(A) Describes the Recognized Statistical Agency's or Unit's goals and provides specific, measurable objectives and performance metrics; and

(B) Is reassessed no less than every four years alongside and in alignment with the parent agency's strategic plans;

(iii) A list of relevant legislation, regulation, and policies or management orders, including those defining organizational placement, that govern the Recognized Statistical Agency's or Unit's ability to maintain its commitment to these four fundamental responsibilities;

(iv) Each policy or standard required under this part; and

(v) Any other information as determined by the head of the Recognized Statistical Agency or Unit.

(c) For the heads of Recognized Statistical Agencies and Units to bear the responsibilities given to them under 44 U.S.C. 3563, they shall have the appropriate resources with respect to their statistical products and statistical information.

(1) Each Recognized Statistical Agency or Unit shall produce a budget request specific to the Recognized Statistical Agency or Unit, that is fully compliant with the requirements of OMB Circular A-11, to be included independently (*i.e.*, clearly presented as the request for the Recognized Statistical Agency or Unit with figures and justification specific to the Recognized



Statistical Agency or Unit) as part of the highest organizational unit's annual budget submission and process, and participate directly, accompanied by the highest organizational unit as appropriate, in presenting their agency specific request to the Office of Management and Budget;

(2) If a parent agency or a Recognized Statistical Agency or Unit identifies (*e.g.*, through the agency capacity assessment or other means) that the Recognized Statistical Agency or Unit lacks sufficient resources to carry out the responsibilities set forth in this part, then, to the extent practicable, the parent agency that contains that Recognized Statistical Agency or Unit, should be made the necessary resources available to the Recognized Statistical Agency or Unit. If the necessary resources cannot be made available, the parent agency and the Recognized Statistical Agency or Unit must notify OMB within 60 days.

(3) When a Recognized Statistical Agency or Unit relies on a support function of the parent agency:

(i) The Recognized Statistical Agency or Unit shall, to the greatest extent possible, allocate labor resources to ensure a one or more employees, depending on the size of the Recognized Statistical Agency or Unit, are knowledgeable of the support function, its policies and processes, and best practices for interacting with such support function.

(ii) The parent agency shall:

(A) Designate at least one employee of each support function to serve as a liaison for the Recognized Statistical Agency and Unit; and

(B) Ensure each designated employee is knowledgeable of the Recognized Statistical Agency or Unit and its fundamental responsibilities and is capable of effective intra-agency communication.

(iii) The parent agency's support function and the Recognized Statistical Agency or Unit shall work collaboratively to ensure the function meets the needs of the Recognized Statistical Agency or Unit in a manner to that complies with this part and all applicable laws.

***Option A for paragraph (c)(4)***

(4)(i) Each parent agency shall when providing any service to a Recognized Statistical Agency or Unit, enter into a written agreement if requested by the Recognized Statistical Agency or Unit, and provide the service in conformance with agreed upon requirements. If unable to meet those requirements, permit the Recognized Statistical Agency or Unit to obtain (via contracts, other agreements, or hiring) and to directly oversee any support services required to fulfill their statistical mission and responsibilities.

(ii) Each Recognized Statistical Agency or Unit shall explicitly define requirements needed to uphold these responsibilities for any service provided by another agency or entity, such as centralized IT, contracting, or acquisitions services. If needed, document these requirements within service-level agreements with the agencies and organizations that provide those services. To meet this requirement, Recognized Statistical Agency or Units shall interact directly with all appropriate officials within the parent agency who are officially responsible for and have expertise in acquisition planning and contracting, including Contracting Officers.

(iii) Each parent agency shall consult with Recognized Statistical Agencies and Units before making awards for services and software that would impact Recognized Statistical Agencies and Units to avoid binding actions and decisions that would conflict with the Recognized Statistical Agency's or Unit's ability to carry out its responsibilities.

***Option B for paragraph (c)(4)***

(4) Prior to making or renewing an award for services or software that will directly affect a Recognized Statistical Agency or Unit's ability to meet the fundamental responsibilities, the relevant parent agency official shall consult with the head of the Recognized Statistical Agency or Unit to avoid binding actions and decisions that would conflict with the Recognized Statistical Agency or Unit's ability to carry out its fundamental responsibilities.

(i) The relevant parent agency official shall ensure that the service or software is sufficient for the Recognized Statistical Agency or Unit to meet its requirement to carry out its fundamental responsibilities. The head of the Recognized Statistical Agency or Unit shall clearly

communicate the needs of the Recognized Statistical Agency or Unit to meet its requirement to carry out its fundamental responsibilities. If requested by the relevant parent agency official, the head of the Recognized Statistical Agency or Unit shall provide a written list explicitly defining the requirements needed of the service or software to meet its requirement to carry out its fundamental responsibilities.

(ii) If requested by the head of the Recognized Statistical Agency or Unit, the head of the Recognized Statistical Agency or Unit and the head of the office providing the service or software shall enter into a written agreement, and the parent agency shall provide the service or software in accordance with such agreement.

(iii) The Recognized Statistical Agency or Unit may obtain the service or software separately from the parent agency if:

(A) They are unable to reach an agreement; or

(B) At any point in time, the parent agency is unable to provide the service or software in accordance with the agreement.

(iv) If the Recognized Statistical Agency or Unit determines it is necessary to obtain services or software separately from the parent agency, the Recognized Statistical Agency or Unit shall notify the head of the agency. The head of the agency shall make necessary resources available or notify OMB pursuant paragraph (c)(2) of this section.

(d) For the heads of Recognized Statistical Agencies and Units to bear the responsibilities given to them under 44 U.S.C. 3563, they shall have the appropriate decision-making authority with respect to their statistical products, statistical information, and statistical activities.

(1) Unless prohibited by statute, when a statute, regulation, or policy, authorizes any other agency official to make determinations directly affecting the ability of a Recognized Statistical Agencies or Unit to carry out the fundamental responsibilities, the authorized official may delegate that responsibility in writing to the head of the Recognized Statistical Agency or Unit.

(2) To the extent permissible under law, the individual to whom a responsibility has been delegated under paragraph (d)(1) of this section shall consult with the delegating official in carrying out such responsibility.

(3) If the Recognized Statistical Agency or Unit determines that delegation is necessary to carry out its fundamental responsibilities, the Recognized Statistical Agency or Unit shall notify the head of the parent agency.

(4) In making a determination regarding delegation under this paragraph (d), the head of the parent agency shall:

(i) Consider the needs of the Recognized Statistical Agency or Unit and ensure it has all necessary and appropriate authority to carry out its fundamental responsibilities; and

(ii) Ensure the decision is consistent with the government-wide application and interpretation of statistical laws and may consult with the Chief Statistician of the United States.

(e) In consultation with the Recognized Statistical Agency or Unit, each parent agency shall:

(1) Consistent with statutory obligations, revise any regulations, policies, practices or organizational structures that impede a Recognized Statistical Agency's or Unit's ability to meet its statutory responsibilities;

(2) Consider these responsibilities when new regulations, policies, practices, organizational structures, or budgets are developed; and

(3) Ensure that agency regulations, policies, practices, and agreements support the ability of Recognized Statistical Agencies and Units to:

(i) Present and maintain accurate information;

(ii) Make timely corrections or updates to their statistical products or data when the Recognized Statistical Agency or Unit determine such updates are needed; and

(iii) Meet its responsibility for producing relevant and timely statistical products.

(f) The Office of Management and Budget shall implement its authorities and responsibilities under 44 U.S.C. chapter 35 in a manner that enables, supports, and facilitates Recognized Statistical Agencies and Units in carrying out their fundamental responsibilities in a manner consistent with this part. This shall include delegating the following responsibilities to the Chief Statistician of the United States appointed under 44 U.S.C. 3504(e)(7):

(1) The review and approval of proposed collections of information submitted to the Office of Management and Budget by Recognized Statistical Agencies and Units;

(2) The authority to perform the functions described in 44 U.S.C. 3504(e);

(3) The coordination and oversight of confidentiality and disclosure policies established in 44 U.S.C. 3562; and

(4) The authority to carry out any of the functions or responsibilities in the regulations in this part or policies promulgated under 44 U.S.C. chapter 35, subchapter III.

**§ 1321.5 Relevance and timeliness.**

(a) Recognized Statistical Agencies and Units shall uphold the responsibility to produce and disseminate relevant and timely statistical information. Parent agencies shall enable, support, and facilitate Recognized Statistical Agencies and Units in carrying out their responsibility to produce and disseminate relevant and timely statistical information. Recognized Statistical Agencies and Units shall determine what statistical products to disseminate, including in the context of the Standard Application Process required under 44 U.S.C. 3583; the content of their statistical products; and the timing of disseminations.

(b) Each Recognized Statistical Agency or Unit shall continually seek to understand the diverse interests and needs of policymakers, current and future data users, and the public to ensure statistical products are relevant.

(1) Recognized Statistical Agencies and Units shall:

(i) Consult with parent agency officials to assess and seek improvements to the relevance of its statistical products to users' needs and to inform what statistical products to produce and disseminate;

(ii) Consult with other data users to assess and seek improvements to the relevance of its statistical products to users' needs and to inform what statistical products to produce and disseminate;

(iii) Be knowledgeable about programs and policies relating to their subject domains;

(iv) Coordinate and communicate across agencies when planning information collections and dissemination activities; and

(v) Keep abreast of interests and analytical goals of data users.

(2) Parent Agencies shall:

(i) Share relevant policy and program needs with sufficient detail to allow the Recognized Statistical Agency or Unit to be responsive to those needs;

(ii) Consult with Recognized Statistical Agencies or Units as part of their stakeholder engagement process when developing the agency learning agendas, required under 5 U.S.C. 312, in alignment with OMB guidance; and

(iii) Allow Recognized Statistical Agencies or Units to establish, determine the membership of, and manage advisory groups or other means of systematic stakeholder engagement, in accordance with applicable law.

(c) Recognized Statistical Agencies and Units shall maximize the timeliness of statistical products by minimizing the time interval between the release of statistical products and the reference date to the extent practicable, considering available resources and the effects on the other quality dimensions of the information products. Recognized Statistical Agencies and Units shall consult with parent agencies regarding the availability of relevant support functions required to support the release of statistical products. Parent agencies shall support efforts to maximize timeliness of statistical products by ensuring Recognized Statistical Agencies and

Units are aware of any emerging needs and providing necessary resources to respond to such emerging need. In any instance where a parent agency observes that a Recognized Statistical Agency or Unit has failed to maximize the timeliness of statistical products by minimizing the interval between the release of the statistical products and the reference date to the extent practicable, the head of the parent agency shall notify the Chief Statistician of the United States.

(d) Recognized Statistical Agencies and Units shall publicly announce and adhere to a schedule for the release of statistical products.

(1) Recognized Statistical Agencies and Units shall:

(i) Publish the schedule on the website required under § 1321.4;

(ii) Publish schedules containing the date of release of its regular and recurring statistical products for the next calendar year prior to the beginning of that calendar year;

(iii) Publish the date for release of non-regular or non-recurring statistical products as soon as the date is established;

(iv) Designate an office that is responsible for providing the release schedule and make its contact information readily available to the public on the website required under § 1321.4;

(v) Minimize changes to the release schedule after it has been published to accommodate only special, unforeseen circumstances; and

(vi) If needed after the schedule has been published, publicly announce any change to the schedule as soon as possible and provide a detailed explanation for such change.

(2) Each parent agency shall support adherence to the published schedule by:

(i) Communicating any parent agency activities or processes that could impact the timing of dissemination activities to Recognized Statistical Agencies or Units before the schedule is published; and

(ii) If involved in dissemination activities, preparing for dissemination of statistical products in accordance with the published schedule.

## **§ 1321.6 Credibility and accuracy.**

(a) Recognized Statistical Agencies and Units shall uphold the responsibility to conduct credible and accurate statistical activities. Recognized Statistical Agencies and Units shall determine the appropriate methods, processes, policies, and general conduct of their statistical activities. Each Recognized Statistical Agency or Unit shall:

(1) Maintain publicly available policies and standards on the quality of the information used by the Recognized Statistical Agencies and Units and statistical products they disseminate, by:

(i) Developing and making available to the public policies and standards to ensure the credibility and accuracy of all statistical products and data disseminated by the Recognized Statistical Agency or Unit;

(ii) Regularly reviewing, maintaining, and improving the policies in paragraph (a)(1)(i) of this section and the methods used to implement them to ensure they are current and effective; and

(iii) Establishing policies and procedures, in consultation with the parent agency's Chief Data Officer and Evaluation Officer, for assessing the quality of data used by the Recognized Statistical Agencies and Units not originating in the Recognized Statistical Agencies and Units;

(2) Publicly provide documentation for its statistical products, including:

(i) Descriptions of methods and procedures used in collection design, collecting, methods, data processing, editing, compiling, storing, analyzing, and disseminating information to users, as applicable;

(ii) Indicators of data quality sufficient to allow data users to assess the fitness of the data for their own purposes;

(iii) Descriptions of known limitations or sources of error in the data;

(iv) Citation to source materials where feasible; and

(v) Identification of errors in the statistical products discovered after their release;



(3) Ensure that Recognized Statistical Agency or Unit lifecycle data management practices adhere to all applicable statutes, and standards and guidance issued by the Office of Management and Budget; and

(4) Adhere to all applicable statutes and current Office of Management and Budget peer review policies when submitting articles to refereed journals, presenting at professional conferences, and engaging in peer review activities, including OMB M-05-03: Final Information Quality Bulletin for Peer Review and any successor policies.

(b) Parent agencies shall enable, support, and facilitate the Recognized Statistical Agencies and Units in carrying out their responsibility to conduct credible and accurate statistical activities. Each parent agency shall:

(1) Ensure Recognized Statistical Agencies and Units have sufficient autonomy to maintain their own standards for the quality of the data used and the statistical information they produce and to determine whether their statistical products are of sufficient quality for dissemination. Unless prohibited by statute, when a statute, regulation, or policy authorizes any other agency official to make such determinations, that responsibility shall be delegated to the head of the Recognized Statistical Agency or Unit;

(2) Prohibit its employees, contractors, and agents, other than those designated by the releasing Recognized Statistical Agency or Unit head, from publicly commenting on any data released by the associated Recognized Statistical Agencies and Units until after the official release of the data;

(3) Permit Recognized Statistical Agencies and Units to determine if statistical disseminations, including related statistical press releases or publicity materials not containing policy pronouncements, are to be disseminated by or through a parent agency and ensure that statistical information attributable to the Recognized Statistical Agency or Unit disseminated by or through a parent agency is not altered in any way not authorized by the head of such Recognized Statistical Agency or Unit; and

(4) Allow Recognized Statistical Agencies and Units to submit articles that do not address policy, management, or budget issues to refereed journals, present at professional conferences, and engage in peer review activities without requiring approval from outside of the Recognized Statistical Agency or Unit, unless such approval is required by law.

(i) For parent agency support function reviews of a Recognized Statistical Agency or Unit, such as ethics reviews, the parent agency shall either:

(A) Assign support function personnel that will conduct these reviews to report to the head of the Recognized Statistical Agency or Unit; or

(B) Ensure that the support function personnel conducting the review works with the liaison designated in § 1321.4 to provide sufficient information and advice, including a recommendation if appropriate, to the head of the Recognized Statistical Agency or Unit so that such head may make an informed decision regarding approval.

(ii) The head of the Recognized Statistical Agency or Unit shall ensure all statutory requirements, such as ethics, continue to be met.

#### **§ 1321.7 Objectivity.**

(a) Recognized Statistical Agencies and Units shall uphold the responsibility to conduct objective statistical activities. In fulfillment of this responsibility, Recognized Statistical Agencies and Units shall determine the policies and practices that ensure objectivity of their statistical activities, including ensuring objectivity and equitable access to the statistical products they disseminate. Each Recognized Statistical Agency or Unit shall:

(1) Produce statistical products that are impartial and free from undue influence and the appearance of undue influence, by:

(i) Employing transparent and reproducible methods and processes in producing statistical products, to the extent feasible and consistent with the protection of confidential statistical data;

(ii) Impartially disseminating statistical products in a clear and complete manner, without limitation or selection to promote a particular policy position or group interest;

(iii) Announcing dissemination activities in a manner designed to be factual, comprehensive, accurate, easily understood by the public, and without favor to a particular policy position or group interest, such as through statistical press releases or on the Recognized Statistical Agency's or Unit's website; and

(2) Ensure data users have equitable access to its statistical products, by:

(i) Making public releases available to all data users at the same time, with limited exceptions as allowable in OMB Statistical Policy Directives, in accordance with the scheduled release date; and

(ii) Disseminating and making available to the public free of charge any statistical product deemed suitable for public dissemination that has been provided to any other data user. For confidential statistical data that are not deemed suitable for public dissemination, ensuring policies and procedures for granting access are applied consistently, in accordance with statute, and regulation and guidance issued by the Office of Management and Budget to implement 44 U.S.C. 3582 and 3583, or other applicable authorities, that govern access to confidential statistical data;

(3) Determine the necessary qualifications and allocate available labor resources among different job positions supporting the Recognized Statistical Agency or Unit's lifecycle data management (*e.g.*, economists, statisticians, data scientists, IT specialists, and other subject matter experts) and evaluate candidates based on assessments of scientific and technical knowledge, credentials, experience, and integrity; and

(4) Maintain functional separation from any administrative, regulatory, law enforcement, and policymaking functions at any parent agency or at the Recognized Statistical Agency or Unit by maintaining exclusive authority with the Recognized Statistical Agency or Unit for granting

access to its confidential statistical data and the information systems that hold confidential statistical data in accordance with this section and applicable law and policy.

(b) Parent agencies shall enable, support, and facilitate the Recognized Statistical Agencies and Units in carrying out their responsibility to conduct objective statistical activities.

Each parent agency shall:

(1) Allow the publication of statistical products without requiring clearance of the content from offices or officials outside of the Recognized Statistical Agency or Unit, and allow Recognized Statistical Agencies and Units to respond to inquiries from external interested communities and stakeholders, including the media, the Congress, and others, about their statistical products in a manner that ensures appropriate consultation without the parent agency requiring review, approval, or edits to the response, unless responses to those inquiries include matters related to policy, budget, or management;

(2) Support the impartiality of Recognized Statistical Agencies and Units in their production and dissemination of statistical products by ensuring they are permitted to determine the methods for conducting statistical activities for statistical purposes. Unless prohibited by statute, when a statute, regulation, or policy authorizes any other agency official to make such determinations, that responsibility shall be delegated to the head of the Recognized Statistical Agency or Unit, as described in § 1321.4(b);

(3) Ensure compliance with 44 U.S.C. 3520(d);

(4) Ensure that the Recognized Statistical Agency or Unit has resources dedicated to the Recognized Statistical Agency or Unit and is able to manage those resources in accordance with the responsibilities described in this part, by allowing it to:

(i) Maintain and determine the functional requirements, specifications, and performance capabilities of the information technology it uses to conduct statistical activities and disseminate statistical products;

(ii) Determine the content, functionality, appearance, and layout of its website, the presentation of statistical information, and the timing of when statistical information is disseminated;

(iii) Allocate its labor resources among different job positions;

(iv) Develop, explain, and respond directly to queries about resource needs through congressional and executive branch budget processes, as those processes are established through OMB Circular A-11; and

(5) Support the autonomy of each Recognized Statistical Agency or Unit to manage and control its data by ensuring that Recognized Statistical Agencies and Units have the authority to make all determinations regarding:

(i) The governance of its data;

(ii) Access to its confidential statistical data and the information systems that hold confidential statistical data; and

(iii) The approval, direction, and management of the use of its confidential statistical data by external parties for purposes of developing evidence, as defined in the 44 U.S.C. 3561 and relevant OMB policies, including authority for ensuring compliance with 44 U.S.C. 3583.

#### **§ 1321.8 Confidentiality.**

(a) Recognized Statistical Agencies and Units shall uphold the responsibility to protect the trust of information providers by ensuring the confidentiality and exclusively statistical use of data acquired under an obligation to maintain confidentiality. In fulfillment of this responsibility, Recognized Statistical Agencies and Units shall determine whether the tools, practices, and procedures employed to ensure the effective security of the confidential statistical data they hold comply with this part and with statistical laws. Each Recognized Statistical Agency or Unit shall:

(1) Secure all confidential statistical data against unauthorized access by ensuring that any information systems containing confidential statistical data employ effective barriers to

restrict access such that only employees of Recognized Statistical Agencies and Units or their authorized agents have access to such data in accordance with the requirements of CIPSEA 2018, other applicable statistical laws, and policies and guidance issued by the Office of Management and Budget, while also ensuring compliance with the Federal Information Security Modernization Act of 2014, as amended and as codified at 44 U.S.C. 3551-3558, and other applicable laws and policies by:

- (i) Ensuring required security policies, configurations, and controls placed on information technology assets are appropriate to protect the confidentiality of statistical information throughout the data lifecycle;

- (ii) Controlling logical access to data storage assets containing confidential statistical data and restricting access to authorized personnel; and

- (iii) Maintaining and securing access logs for all personnel authorized to access confidential statistical data;

- (2) Ensure that confidential statistical data are not used for any nonstatistical purposes by:

- (i) Coordinating with the agency Chief Freedom of Information Act Officer to ensure appropriate application of exemptions pertaining to confidential statistical data in response to Freedom of Information Act requests;

- (ii) Employing current best practices, including statistical disclosure avoidance methods and procedures, to minimize the risk of disclosing confidential statistical data;

- (iii) Maintaining supervision and control over individuals authorized to have access to confidential statistical data through a confidentiality program; and

- (iv) Determining, in collaboration with the relevant parent agency, whether agent status or direct assignment to the Recognized Statistical Agency or Unit for personnel such as statisticians, data scientists, information technology specialists, and subject matter experts who access confidential statistical data is appropriate;

(3) Provide information to the public about the integrity, confidentiality, and impartiality of all confidential statistical data acquired and maintained under its authority, so that it retains the trust of its information providers and data users, by:

(i) Making readily accessible, e.g., through its website, information about its policies on confidentiality and information security;

(ii) Developing and maintaining a comprehensive data inventory as required under 44 U.S.C. 3511 and related guidance; and

(iii) Complying with the Standard Application Process required under 44 U.S.C. 3583 and related guidance;

(4) Provide sufficient information to respondents to enable them to make an informed decision about whether to provide the requested information by:

(i) Providing notification statements to survey respondents consistent with the regulations in this part implementing 44 U.S.C. 3506, to include the intended uses of the information being collected, potential future uses, their relevance for public purposes, and the extent of confidentiality protection that will be provided; and

(ii) When acquiring data from another agency, ensuring that the agreement with the providing agency addresses any legal requirements for notice and consent consistent with applicable law and applicable regulations in this part implementing 44 U.S.C. 3581;

(5) Maintain and develop professional staff, or identify appropriate ways to access professional staff, that are trained in statistical disclosure limitation and restricted access mechanisms to maximize the protection of the confidential statistical data throughout the data lifecycle, including creation or collection, processing, dissemination, use, storage, and disposition; and

(6) Inform employees, contractors, and other approved agents of the Recognized Statistical Agencies and Units of their responsibility to not willfully disclose confidential statistical data in an identifiable form, and of the legal consequences of such disclosure, such as

the penalty in 44 U.S.C. 3572(f) that provides that any officer, employee, or approved agents of the Recognized Statistical Agency or Unit who willfully discloses such information is subject to fines and penalties, to include being guilty of a class E felony and imprisoned for not more than 5 years, or fined not more than \$250,000, or both.

(b) Parent agencies shall enable, support, and facilitate Recognized Statistical Agencies and Units in carrying out their responsibility to protect the trust of information providers by ensuring the confidentiality and exclusively statistical use of their information. Each parent agency shall:

(1) Ensure that the Recognized Statistical Agencies and Units have the sole authority to provide access to confidential statistical data. Unless prohibited under statute, when a statute, regulation, or policy authorizes any other official to make such determinations, that responsibility shall be delegated to the head of the Recognized Statistical Agency or Unit.

(2) Ensure that implementation of the Federal Information Technology Acquisition Reform Act is consistent with Recognized Statistical Agencies' and Units' responsibility to protect confidential statistical data from unauthorized use or disclosure, by:

(i) Ensuring that information technology policies appropriately safeguard and protect the integrity, confidentiality, and availability of confidential statistical data to ensure that the information is secure against unauthorized access, editing, deletion, dissemination, or use; and

(ii) Ensuring that confidential statistical data are protected by any effective security standards established by the Recognized Statistical Agency or Unit in writing.

(3) Ensure that the Senior Agency Official for Privacy (SAOP) consults with any relevant Recognized Statistical Agency or Unit when the SAOP performs their duties related to the Recognized Statistical Agency or Unit's statistical activities, including under 5 U.S.C. 552a, the E-Government Act of 2002, and other applicable statutory requirements. This includes but is not limited to:



(i) Conducting Privacy Impact Assessments on information technology systems, as required by law and OMB guidance, that store and process confidential statistical data;

(ii) Responding to Privacy Act requests to access or amend confidential statistical data maintained by the Recognized Statistical Agency or Unit; and

(iii) Responding to breaches of confidential statistical data in a way that complies with law and policy and is sensitive to the Recognized Statistical Agency's or Unit's need to maintain the public trust.

(c) Recognized Statistical Agencies and Units are responsible for protecting the confidentiality of confidential statistical data. Parent agencies shall, enable, support, and facilitate the Recognized Statistical Agency or Unit in carrying out its responsibility to protect the confidentiality of confidential statistical data.

(1) The head of each Recognized Statistical Agency or Unit shall:

(i) Determine who is authorized to access confidential statistical data;

(ii) Ensure access to confidential statistical data is limited to officers and employees of such Recognized Statistical Agency or Unit and its designated agents; and

(iii) Establish written standards and processes by which the head of such Recognized Statistical Agency or Unit designates a person as an agent, which shall:

(A) Comply with 44 U.S.C. 3572 and other applicable statistical law;

(B) Ensure designated agents are fully informed of and have agreed to comply with all legal requirements to access confidential statistical data; and

(C) Define the scope of such agent's authorization to access confidential statistical data.

(2) The head of the parent agency shall:

(i) Ensure confidential statistical data is secure from access by any individual unless such individual has been authorized to access such confidential statistical data by the head of the Recognized Statistical Agency or Unit in accordance with paragraph (c)(1) of this section;

(ii) Prohibit agency officers or employees from accessing confidential statistical data unless authorized under paragraph (c)(1) of this section; and

(iii) Ensure the Recognized Statistical Agency or Unit has the resources necessary to ensure confidential statistical data is secure from unauthorized access.

(3) Nothing in this part authorizes the head of the parent agency to access confidential statistical data, unless the head of the Recognized Statistical Agency or Unit has designated such individual as an agent.

(4) The head of any office or component within a parent agency that needs access to confidential statistical data shall:

(i) Establish policies to prohibit access to confidential statistical data by any individual unless such individual has been authorized by the head of the Recognized Statistical Agency or Unit in accordance with paragraph (c)(1) of this section;

(ii) Ensure that any officer or employee that needs to access confidential statistical data meets the written requirements issued by the Recognized Statistical Agency or Unit;

(iii) To the greatest extent possible, limit necessary access to confidential statistical data;

(iv) Coordinate with the Recognized Statistical Agency or Unit to determine the number of persons needing access to confidential statistical data; and

(v) Provide the Recognized Statistical Agency or Unit with any information necessary for the Recognized Statistical Agency or Unit to make a determination regarding access to confidential statistical data.

(5) The head of the Recognized Statistical Agency or Unit shall coordinate with the head of any office or component requiring access to confidential statistical data as described in paragraph (c)(2) of this section to identify and designate necessary agents to fulfill the office's or component's responsibilities.

(6) If the head of a parent agency finds that the Recognized Statistical Agency or Unit is unable to designate a sufficient number of agents for the parent agency to fulfill its responsibilities, the head of the parent agency shall consult with the head of the Recognized Statistical Agency or Unit and the Chief Statistician of the United States to resolve the issue.

(7) Each Recognized Statistical Agency or Unit shall track access to confidential statistical data and maintain an access log that details the individual and time of access. The parent agency shall ensure the Recognized Statistical Agency or Unit has sufficient technology resources to ensure all access to confidential statistical data is tracked in an access log.

(i) The Recognized Statistical Agency or Unit shall monitor the access log to ensure only authorized persons have accessed confidential statistical data.

(ii) If any unauthorized person has accessed confidential statistical data, the Recognized Statistical Agency or Unit shall notify the head of the parent agency and the Chief Statistician of the United States, and the head of the parent agency and the head of the Recognized Statistical Agency or Unit shall:

(A) Address any deficiencies that led to such unauthorized access to ensure unauthorized access does not occur in the future; and

(B) Provide a written report to the Chief Statistician of the United States within 30 days detailing the remediation efforts.

### **§ 1321.9 Compliance review.**

#### **Option A for § 1321.9**

(a) The Chief Statistician of the United States, in coordination with the Interagency Council on Statistical Policy (ICSP), established under 44 U.S.C. 3504(e)(8), shall establish a Responsibilities Peer Review Committee (Committee) to develop and govern procedures to assess each Recognized Statistical Agency or Unit and its parent agency for compliance with this part. These assessments shall begin within one year of [EFFECTIVE DATE OF FINAL RULE]. The ICSP will develop a schedule to ensure that each Recognized Statistical Agency or Unit and

its parent agency is audited not less frequently than once every three years. These assessments shall:

(1) Take place for each Recognized Statistical Agency or Unit at least once every three years, although special assessments may be conducted by the Committee due to exigent circumstances if a simple majority of the Committee votes to undertake such a special evaluation; and

(2) Result in a summary of major findings and, if deficiencies are identified during the review, a set of recommendations for improving compliance with this part, which shall be made available to the public on the Recognized Statistical Agency's or Unit's public website in a timely manner to be determined by the Committee.

(b) Each Recognized Statistical Agency and Unit being assessed shall comply with requests for information or documents from the Committee, except where prohibited by law.

(c) Each parent agency shall enable, support, and facilitate such assessments by complying with requests for information or documents that directly relate to the assessment of compliance with this part from the Committee, except where prohibited by law.

(d) The Chief Statistician of the United States shall:

(1) Engage each Recognized Statistical Agency and Unit, and the parent agency that contains them, to address any deficiencies included in the Committee's assessment;

(2) Include a list of recommendations made by the Committee and the status of addressing each recommendation in the annual report required in 44 U.S.C. 3504(e)(2) or similar Office of Management and Budget report to Congress; and

(3) Include standards that outline the potential loss of an agency's status as a Recognized Statistical Agency or Unit, including for persistent failures to comply with this part, in the guidance to implement the designation process required under 44 U.S.C. 3562(a).

**Option B for § 1321.9**

(a) The Council of the Inspectors General on Integrity and Efficiency (CIGIE) shall establish a committee on statistical audits (Committee) to develop expertise in statistical laws and processes necessary to ensure the integrity of statistical agencies. The Committee shall:

(1) Regularly consult with the Chief Statistician of the United States on the appropriate interpretation and application of statistical laws and practices;

(2) Develop criteria for statistical audits, including compliance with this part and other relevant statistical laws and whether the Recognized Statistical Agency or Unit has sufficient resources to carry out its fundamental responsibilities;

(3) Designate Inspectors General with expertise in statistical laws and practices as statistical auditors;

(4) Develop necessary interagency and funding agreements to facilitate the use of such designated statistical auditors to conduct audits of agency compliance with this part; and

(5) Develop a schedule to ensure that each Recognized Statistical Agency or Unit and its parent agency is audited not less frequently than once every three years.

(b) Not less frequently than once every three years, a statistical auditor as designated under paragraph (a) of this section shall audit each Recognized Statistical Agency or Unit and its parent agency.

(c) Inspectors General may conduct off-schedule audits.

(1) The Interagency Council on Statistical Policy (ICSP), established under 44 U.S.C. 3504(e)(8), may request an off-schedule audit of a Recognized Statistical Agency or Unit and its parent agency if the ICSP has reason to believe there is a substantial change in circumstances regarding compliance with this part. The ICSP shall submit a written request with a detailed explanation to CIGIE.

(2) The Committee shall review any ICSP request for an audit, determine whether an audit is appropriate, and provide a written response to the ICSP within 30 days of receiving such request.

(d) The statistical auditor conducting the audit shall submit the results of any statistical audits to the head of the agency, the head of the Recognized Statistical Agency or Unit, the Chief Statistician of the United States, and relevant congressional committees. For purposes of this audit, the head of the Recognized Statistical Agency shall be considered a responsible official.

(e) The Chief Statistician of the United States shall:

(1) Engage each Recognized Statistical Agency and Unit, and the parent agency that contains them, to address any deficiencies identified in the statistical audit;

(2) Include a list of findings or recommendations and the status of addressing each finding or recommendation in the annual report required in 44 U.S.C. 3504(e)(2) or similar Office of Management and Budget report to Congress;

(3) Make available appropriate materials, training, or other relevant resources to the Committee regarding statistical laws and practices; and

(4) Include standards for the possible loss of the agency's status as a Recognized Statistical Agency or Unit for persistent failures to comply with this part in the guidance to implement the designation process required under 44 U.S.C. 3562(a).

#### **Option C for § 1321.9**

(a) Not less frequently than once every three years, each Inspector General of an agency that contains a Recognized Statistical Agency or Unit shall conduct an audit of each Recognized Statistical Agency or Unit and its parent agency. The audit shall evaluate compliance with this part and other relevant statistical laws and whether the Recognized Statistical Agency or Unit has sufficient resources to carry out its fundamental responsibilities. To ensure consistent interpretation and application of statistical laws, the Inspector General shall consult with the Chief Statistician of the United States.

(b) Inspectors General may conduct off-schedule audits.

(1) The Interagency Council on Statistical Policy (ICSP), established under 44 U.S.C. 3504(e)(8), may request an off-schedule audit of a Recognized Statistical Agency or Unit and its parent agency if the ICSP has reason to believe there is a substantial change in circumstances regarding compliance with this part. The ICSP shall submit a written request with a detailed explanation to the Inspector General.

(2) The Inspector General shall review any ICSP request for an audit, determine whether an audit is appropriate, and provide a written response to the ICSP within 30 days of receiving such request.

(c) The statistical auditor conducting the audit shall submit the results of any statistical audits to the head of the agency, the head of the Recognized Statistical Agency or Unit, the Chief Statistician of the United States, and relevant congressional committees. For purposes of this audit, the head of the Recognized Statistical Agency shall be considered a responsible official.

(d) The Chief Statistician of the United States shall:

(1) Engage each Recognized Statistical Agency and Unit, and the parent agency that contains them, to address any deficiencies identified in the statistical audit;

(2) Include a list of findings or recommendations and the status of addressing each finding or recommendation in the annual report required in 44 U.S.C. 3504(e)(2) or similar Office of Management and Budget report to Congress;

(3) Make available appropriate materials, training, or other relevant resources to the Council for Inspector General Integrity and Efficiency regarding statistical laws and practices; and

(4) Include standards for the possible loss of the agency's status as a Recognized Statistical Agency or Unit for persistent failures to comply with this part in the guidance to implement the designation process required under 44 U.S.C. 3562(a).

Dated: August 11, 2023.

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